**DRAFT FACTSHEET- Women and Human Rights**

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# Introduction

The attainment of equality between women and men, and the elimination of all forms of discrimination against women are fundamental human rights and United Nations values. Despite this, women around the world regularly suffer violations of their human rights throughout their life cycle, and the realization of women’s human rights has not always been accorded priority attention. Achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality. This understanding facilitates the development of appropriate strategies for the elimination of such discrimination and measures for the achievement of equality between women and men.

The United Nations has a long history of addressing women’s human rights and much progress has been made in securing women’s rights across the world in the past decades. However, important gaps remain and women’s realities are constantly changing, with new manifestations of discrimination against women regularly emerging. Intersecting forms of discrimination, combining factors such as sex, age, ethnicity, nationality, religion, health status, marital status, education, disability and socio-economic status, among other grounds, also have a particular impact on women, which must be factored into responses.

This Fact Sheet provides an introduction to women’s human rights, beginning with the main provisions in international human rights law and going on to explain particularly relevant concepts for full understanding women’s human rights. In the second part of the Fact Sheet, select areas where women’s human rights are especially threatened are examined together with information on the main work of United Nations human rights mechanisms pertaining to these topics, as well as reference to other human rights expertise in certain instances. The aim of the Fact Sheet is to offer material for a basic understanding of the human rights of women as a whole. Because of space limitations and the wide variety of issues that are relevant to women’s human rights, this publication should not be considered as exhaustive.

# Protection of the human rights of women under international law

Since the founding of the United Nations, women’s equal rights have been included amongst the most fundamental guarantees of human rights. Adopted in 1945, the Charter of the United Nations sets out the goal “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women”. Furthermore, Article 1 of the Charter stipulates that one of the purposes of the United Nations is to promote respect for human rights and fundamental freedoms “without distinction as to race, sex, language or religion”. This prohibition of discrimination based on sex is repeated in articles 13 (pertaining to the mandate of the General Assembly) and 55 (pertaining to the promotion of universal human rights).

Subsequently, in 1948, the Universal Declaration of Human Rights was adopted, also proclaiming equal entitlements to the rights contained in the Declaration, “without distinction of any kind, such as . . . sex, … .” In the drafting of the Declaration, there was considerable discussion about the use of the term “all men” rather than a gender-neutral term.[[1]](#footnote-1) The Declaration was eventually adopted using the terms “all human beings,” and “everyone,” in order to leave no doubt that the Declaration on Human Rights was intended for everyone, man and woman alike.

## Human Rights Instruments

After the adoption of the Declaration on Human Rights, the Commission on Human Rights set itself to drafting two human rights treaties concerning human rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, these are known as the International Bill of Human Rights. The provisions of the two Covenants, as well as other human rights treaties, are legally binding on the States that ratify them.

The human rights guaranteed by the ICCPR include inter alia the right to life, freedom from torture, freedom from slavery, right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups’ rights to their culture, religion and language. The ICESCR guarantees rights including inter alia the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science. The ICESCR and the ICCPR share common language pertaining to the prohibition of discrimination based on, inter alia, sex (Article 2 in ICCPR and ICESCR), as well as equal right of men and women to the enjoyment of all rights (Article 3 in ICCPR and ICESCR) contained in these treaties.[[2]](#footnote-2)

The ICESCR and the ICCPR are important tools for ensuring women’s human rights. As will be explored in further detail below, the specific manner in which women enjoy or are denied their civil, cultural, economic, political and social rights affects the way that these Covenants are interpreted and applied.

However, separate instruments specifically aimed at the protection of women’s rights were considered necessary because the mere fact of their "humanity" has not been sufficient to guarantee women the protection of their rights.[[3]](#footnote-3) The Declaration on the Elimination of Discrimination against Women (DEDAW) was thus adopted in 1967. It provides that discrimination against women is an offense against human dignity and calls on States to “abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women”. Less than a year after its adoption the need to move a step forward was felt and the proposal for a legal binding treaty was made. The Convention on the Elimination of Discrimination against Women (CEDAW) was finally adopted by the General Assembly in 1979.[[4]](#footnote-4) The preamble to CEDAW explains that, despite the existence of other instruments, women still do not have equal rights with men.

CEDAW articulates the nature and meaning of sex-based discrimination and gender equality, and lays out State obligations to eliminate discrimination and achieve substantive equality. Importantly, the Convention covers not only discriminatory laws, but also practices and customs, and it applies not only to State action, but also State responsibility to address discrimination against women by private actors.

With these general principles as an overarching framework, the specific obligations of States to eliminate discrimination against women in political, social, economic and cultural fields are laid out in 16 substantive articles. The Convention covers both civil and political rights (rights to vote, to participate in public life, to acquire, change or retain their nationality, equality before the law and freedom of movement) and economic, social and cultural rights (rights to education, work, health and financial credit). CEDAW also pays specific attention to particular phenomena such as trafficking, certain groups of women, such as rural women, and specific areas where there are special risks to women’s full enjoyment of their human rights, such as matters related to marriage and the family.

The Convention defines discrimination as “…any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”[[5]](#footnote-5)

Such discrimination encompasses any difference in treatment on the grounds of sex which:

* Intentionally or unintentionally disadvantages women;
* Prevents society as a whole from recognizing women's rights in both the domestic and public spheres;
* Prevents women from exercising the human rights and fundamental freedoms to which they are entitled.

CEDAW also specifies the different ways in which States Parties are to eliminate discrimination, including through appropriate legislation prohibiting discrimination, ensuring legal protection of women’s rights, refraining from discriminatory actions, protecting women against discrimination by any person, organization or enterprise, and modifying or abolishing discriminatory legislation, regulations and penal provision. The Convention foresees that achieving equality may require positive action on the part of the State to improve the status of women. To accelerate women's actual equality in all spheres of life, States are permitted to use temporary special measures for as long as inequalities continue to exist. The Convention thus reaches beyond the narrow concept of formal equality and sets its goals as equality of opportunity and equality of outcome. Temporary special measures are both lawful and necessary to achieve these goals. In principle, these measures should be removed once equal status has been achieved.

Importantly, CEDAW adds new, substantive provisions to the other instruments which also deal with equality and non-discrimination. Article 5 recognizes that, even if women's legal equality is guaranteed and special measures are taken to promote their de facto equality, another level of change is necessary for women's true equality. States should strive to eliminate the social, cultural and traditional patterns which perpetuate gender-role stereotypes and to create an overall framework in society that promotes the realization of women's full rights.

As of December 2012, there were 187 States Parties to CEDAW. One of the oft-noted challenges with the implementation of CEDAW is that it is the human rights treaty with the most reservations registered by States, particularly pertaining to articles 2 and 16, which relate to required steps to be taken by States, and discrimination against women in matters related to marriage and the family. Some States have objected that these reservations are contrary to the object and purpose of the Convention, and therefore inadmissible. Some States have recently removed reservations of this nature, but the problem of reservations remains a considerable challenge for the full implementation of the treaty. Lobbying for the withdrawal of these reservations will be an important continued strategy, as well as using the Convention in combination with other human rights treaties guaranteeing women’s equality, to which fewer States have stated reservations.

The prohibition of discrimination based on sex is also provided for in the Convention on the Rights of the Child (article 2) and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (article 7). The Convention on the Rights of Persons with Disabilities (article 6) recognizes the multiple discrimination that women with disabilities are subjected to, and States Parties commit to addressing this discrimination and taking “take all appropriate measures to ensure the full development, advancement and empowerment of women” in the enjoyment of their human rights. The Committee on the Elimination of all forms of Racial Discrimination, which oversees compliance with the Convention on the Elimination of all forms of Racial Discrimination, has also recognized the gender dimensions of racial discrimination, and has “endeavour[ed] in its work to take into account gender factors or issues which may be interlinked with racial discrimination.”[[6]](#footnote-6) Additionally, the Committee against Torture, which monitors the Convention against Torture, regularly addresses issues of violence against women and girls.

## Regional instruments

In addition to the international human rights standards, regional human rights treaties have important provisions for the protection and promotion of women’s human rights.[[7]](#footnote-7)

The African (Banjul) Charter on Human and People’s Rights was adopted in 1981 by the Organisation of African Unity (OAU). Article 2 of the Charter prohibits discrimination on any grounds, including on the grounds of sex, in the enjoyment of the rights stipulated for by the Charter. Article 18 mentions specifically the obligation of African States to “ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated by international declarations and conventions”.[[8]](#footnote-8) This Charter has a specific Protocol on the Rights of Women in Africa (the Maputo Protocol), adopted in 2000.[[9]](#footnote-9)

The Organisation of American States Charter includes non-discrimination provision in its Chapter II, Article III l), and the American Convention on Human Rights in its Article 1. Moreover, OAS adopted a specific Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women in 1994 (Belem do Pará Convention).[[10]](#footnote-10)

Article 14 of the the European Convention on Human Rights,. Article 14 of the Convention prohibits discrimination on any grounds including sex, in the enjoyment of rights contained in the Convention. Since 1998 individuals can address human rights complaints directly to the Court.[[11]](#footnote-11) The Council of Europe recently adopted a new Convention on preventing violence against women and domestic violence (Istanbul Convention), which Turkey became the first member State to ratify in March 2012.

The States of the Association of South East Asian Nations (ASEAN) have issued declarations pertaining to human rights (2012), as well as n human trafficking particularly of women and children (2004), on the elimination of violence against women (2004), and on the promotion and protection of migrant worker’s rights in 2007,[[12]](#footnote-12) all of which contain provisions relevant to the human rights of women.

# Global Commitments

Women’s rights have been at the heart of a series of international conferences, which have produced significant political commitments to ensure women’s human rights, and equality. Starting in 1975, which was also International Women’s Year, Mexico City hosted the first World Women’s Conference, which resulted in a World Plan of Action and the designation of 1975-1985 as the UN Decade for Women. In 1980, another international conference on women in Copenhagen was held, where CEDAW was opened for signature. The Third world conference on women was held in Nairobi, with the CEDAW Committee having begun its work. The three world conferences witnessed extraordinary activism of women from around the world, and set the groundwork for the world conferences in the 1990s to address women’s rights. In addition, the rights of women belonging to particular groups, such as older women, minority ethnic women or women with disabilities have been also addressed in various other international policy documents such as the International Plans of Action on Ageing (Vienna 1982 and Madrid 2002), the Durban Declaration and Programme of Action (2001) and the World Programme of Action concerning Disabled Persons (1982).

## Vienna Declaration & Platform for Action

In 1993, the World Conference on Human Rights was held in Vienna and sought to review the status of the human rights machinery in place at the time. Women’s rights activists mobilized to ensure that women’s human rights were fully on the agenda of the international community, joined by the rallying cry “Women’s Rights are Human Rights.” Particularly organizing around the issue of violence against women, civil society activists organized tribunals to place the spotlight on violations of women’s rights, previously unaddressed because considered part of the private sphere, taboo, or simple accepted as an inevitable part of women’s lives. The Conference was successful in adopting the Vienna Declaration and Program for Action, which stated that “the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights” and placed particularly heavy emphasis on eliminating all forms of gender-based violence.[[13]](#footnote-13)

## International Conference on Population and Development

The International Conference on Population and Development (ICPD), which was held in Cairo in 1994, represented an important milestone for women’s rights. While the conference was focused on population issues, the delegates meeting in Cairo agreed that population is not only about demographics, but more importantly, about people. The issues taken up in the ICPD Programme of Action are fundamentally related to women’s human rights, including gender equality, the family, reproductive health, birth control and family planning, women’s health, as well as immigration and education of women. Importantly, the ICPD Programme of Action is explicitly grounded in human rights, and proclaims that “[a]dvancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes.” The Conference was also important for its clear statement of reproductive rights, explaining that these “rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.”

The Programme of Action sets specific targets relating to the provision of universal education; the reduction of infant, child and maternal mortality; and to ensuring universal access by 2015 to reproductive health care, including family planning, assisted childbirth and prevention of sexually transmitted infections including HIV/AIDS. Follow up conferences have been organized to assess progress towards these goals. In this context, UNFPA has noted that “[p]ersistent inequities are key factors in limiting progress.”[[14]](#footnote-14)

## Beijing Declaration & Platform for Action

Adopted during the Fourth World Conference on Women in September 1995, the Beijing Declaration and Platform for Action focused on 12 areas concerning the implementation of women’s human rights and set out an agenda for women’s empowerment. It builds on the results of the previous three world conferences on women, but is considered a significant achievement in explicitly articulating women’s rights as human rights. The Platform for Action includes a series of strategic objectives, aimed at the elimination of discrimination against women and achievement of equality between women and men.[[15]](#footnote-15). It involves political and legal strategies at a global scale using a rights framework as its basis. The Platform for Action is the most comprehensive expression of governments’ commitments to the human rights of women.[[16]](#footnote-16)

Subsequent reviews of the implementation of the Beijing Declaration & Platform for Action have revealed that although significant amounts of progress have been made in some areas of women’s human rights, “discriminatory legislation as well as harmful traditional and customary practices and negative stereotyping of women and men still persist” particularly in family, civil, penal labour and commercial laws or codes, or administrative rules and regulations[[17]](#footnote-17). It is concerning that both the 2005 and 2010 reviews of the Platform concluded that de jure and de facto equality has not been achieved in any country in the world and the 2010 review recognized that even where legal reforms have taken place, they are often ineffectively implemented.[[18]](#footnote-18)

## Millennium Development Goals

In 2000, the international community agreed to 8 time-bound development targets to be achieved by the year 2015, including a Goal on gender equality and the empowerment of women, as well as one on the reduction of maternal mortality. Although they have shortcomings from a human rights perspective, the MDGs are an important political commitment which has galvanized international support for increased attention to some of the world’s most daunting problems.

With respect to women’s rights, Goal 3 is to promote gender equality and empower women. However, the corresponding target relates only to eliminating gender disparities in education. While girls’ access to education is imperative for achieving gender equality, this narrow target is insufficient for measuring progress on achieving gender equality and empowering women. In addition to an indicator on the ratio of girls to boys in education, Goal 3 includes indicators on the share of women in wage employment in the non-agricultural sector and the proportion of seats held by women in national parliament, but these additional indicators do not have benchmarks in the MDG project. Critical issues such as violence against women and discriminatory laws are not addressed.

MDG 5 is also primarily concerned with women, with an aim to reduce by three quarters, between 1990 and 2015, the maternal mortality ratio. Unfortunately, at the 2010 review Summit of the MDGs, the goal on maternal mortality was revealed to be the most off track of all of the MDGs. This reality has been considered especially scandalous considering the fact that we have the knowledge and tools available to make pregnancy and childbirth a safe experience for women. In 2010, the Secretary General launched a Global Strategy for Women’s and Children’s Health, setting out key actions to improve the health of women and children worldwide.

Integrating human rights, and gender equality, throughout the MDGs and in the post-2015 development agenda are key to achieving meaningful progress on these critical issues.

## The UN Conference on Sustainable Development

The Rio+20 Conference on sustainable development brought Heads of State and Government to Brazil in 2012, to appraise implementation progress and gaps for agreements struck since the landmark 1992 UN Conference on the Environment and Development in Rio. In Rio+20, countries renewed their political commitment to sustainable development, agreed to establish a set of sustainable development goals (SDGs), and established a high-level political forum on sustainable development. Importantly, the outcome document also reaffirms the commitments of States to “women’s equal rights, access and opportunities for participation and leadership in the economy, society and political decision-making,” and includes explicit references to accelerating implementation of commitments in CEDAW, the Beijing Platform for Action and the Millennium Declaration. The outcome document also includes recognition that “gender equality and the effective participation of women are important for effective action on all aspects of sustainable development” and calls for the repeal of discriminatory laws and ensuring women’s equal access to justice..[[19]](#footnote-19)

# United Nations bodies

# The Human Rights Council, and its Mechanisms

The Human Rights Council is the main inter-governmental body of the United Nations charged with the promotion and protection of human rights. With 47 States elected by the General Assembly as members of the Council, the Human Rights Council has regularly held special panels relating to women’s rights and integration of a gender perspective since its creation in 2006. There is also a vast array of resolutions from the Council, and its predecessor, the Commission on Human Rights, which call on States to implement their obligations relating to women’s rights. These discussions and resolutions are important elements in keeping women’s rights on the agenda.

The Human Rights Council also has the power to call special sessions where it perceives serious human rights violations taking place. These special sessions have, in some cases, presented opportunities to examine violations of women’s rights. For instance, the special session on Darfur, Sudan, led to a Report of the High-Level Mission on the situation of human rights there, in which specific concerns were raised about rape and sexual violence, and the lack of access to justice for these crimes.[[20]](#footnote-20) The special session on the Democratic Republic of Congo also led to reports on the situation there which expressed particular concern about sexual violence and gender inequality.[[21]](#footnote-21) Furthermore, the Human Rights Council recently established Commissions of Inquiry for Libya and for Syria, to investigate the violations of international humanitarian law and human rights law by all parties to the conflict that have taken place there during recent civil strife. All commissions of inquiry involve an expert on sexual and gender-based violence, and the reports include findings on gender-based violence and recommendations on gender aspects of accountability and transitional justice.[[22]](#footnote-22)

The Universal Periodic Review (UPR), a new procedure established at the creation of the Council, also presents important opportunities to assess State compliance with its international obligations related to the human rights of women. Under this mechanism, the human rights situation of all UN Member States is reviewed every 4,5 years. One preliminary analysis of UPR recommendations revealed that women’s rights are among the most frequently raised issues in the context of UPR dialogues.[[23]](#footnote-23)

Special Procedures mandates account for some of the most critical and detailed work carried out within the United Nations human rights system. These mandates are established by the Human Rights Council to examine particular thematic issues, or the human rights situation in a certain country.[[24]](#footnote-24) Certain special procedures mandates are specifically concerned with women’s rights, such as the Special Rapporteur on violence against women, its causes and consequences, and the Working Group on Discrimination against Women in law and practice. Other mandates have devoted specific attention to women’s rights and gender in their work, particularly in undertaking thematic research on women and specific human rights, ensuring attention to women’s rights in their country visits, and communicating with Governments on specific cases of alleged violations of women’s human rights.

The work of special procedures mandates contributes to enhanced understanding of the international human rights law, reflecting evolving interpretations to better take account of women’s experience and denials of women’s human rights. Various examples of these contributions are highlighted in connection with specific examples examined later in this publication.

## Security Council resolutions

The Security Council of the United Nations has adopted a series of resolutions specifically relating to women, peace and security. In 2000, the Security Council unanimously adopted resolution 1325, which calls for all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts. The resolution calls for increased participation of women in decision-making and peace processes, gender perspectives in training and peacekeeping as well as gender mainstreaming in United Nations reporting systems. Resolution 1325 and subsequent Security Council resolutions and UN Secretary General reports on the same topic also call on all parties to conflicts to take special measures to protect women and girls from gender-based violence in the context of armed conflict, while at the same time recognizing women’s important role in peace processes as agents of change.[[25]](#footnote-25)

1. **Commission on the Status of Women**

The Commission on the Status of Women (CSW) is a functional commission established by the [United Nations Economic and Social Council (ECOSOC)](http://www.un.org/docs/ecosoc/) in 1946 with the aim “to prepare recommendations and reports” to the Council “on promoting women's rights in political, economic, civil, social and educational fields”.[[26]](#footnote-26) The Commission is also mandated to make recommendations to the Council on “urgent problems requiring immediate attention in the field of women's rights”. The Commission meets once a year and its principal output is the agreed conclusions on priority themes set for each year. The agreed conclusions include an assessment of progress, gaps and challenges, as well as a set of concrete recommendations addressed to governments, international organizations, civil society actors and other relevant stakeholders. The Commission also adopts a number of resolutions on a variety of women’s rights related issues. Throughout its history, the Commission has played a key role in promoting women’s rights, actively contributing to landmark international legal and policy instruments such as the CEDAW, DEVAW and the Beijing Declaration and Platform for Action.

# Key Concepts

In the past, human rights had been conceptualized in a way that did not take account of women’s lived reality and the fact that women are facing violence, discrimination and oppression as part of their daily lives. Consequently, women’s experiences were not adequately addressed by the human rights framework until relatively recently. The work of activists, human rights mechanisms and States has been critical in ensuring that the human rights framework has grown and adjusted to encapsulate gender-specific dimensions of human rights violations in order to better protect women. Effectively ensuring women’s human rights requires a comprehensive understanding of the underlying societal structures and power relations that define and influence whether women are able to enjoy their human rights. These power structures have an impact on all aspects of life, from law, to politics, to economic and social policy, to family and community life.

The following Section examines some of the key concepts that are critical to the protection and promotion of women’s human rights.

## The Public-private divide

Traditionally, States ratify human rights treaties, and thus States are bound by those provisions. Thus, the historical focus of human rights law has often been on State-sponsored actions which constitute violations of human rights – for instance, much attention was directed to violations of civil and political rights committed by the State or its agents, such as killings, torture, and arbitrary detention. As a result, human rights violations happening in the public sphere were prioritized to the exclusion of violations happening in the private sphere and violations committed by private individuals. This focus on public sphere violations committed by the State led to a gendered public - private divide within human rights discourse, which excluded violations of women’s rights, such as violence against women, from the public discourse and debate on human rights.[[27]](#footnote-27)

As a result of this dominant logic, women’s human rights have often been neglected or accorded less importance than other human rights .[[28]](#footnote-28) Since the 1980s and 1990s, the women’s rights movement presented a critique against this prioritization of human rights that perpetuated violations of women’s human rights and a male bias in the interpretation of human rights law.[[29]](#footnote-29)

The CEDAW Convention covers both public and private acts, evidenced inter alia by its Articles 2(e), 2(f) and 5(a). Article 2(e) specifically addresses the obligation of States to address discrimination against women perpetrated by any person, organization or enterprise, and Article 2(f) concerns the modification of not only laws and regulations, but also customs and practices. Article 5(a) demands that States “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices” which are based on gender stereotypes or perceived roles of men and women.

The CEDAW Committee, as well as other UN human rights bodies and mechanisms including the Human Rights Committee, have increasingly pronounced themselves on human rights violations committed by private actors as being within the ambit of State human rights obligations.[[30]](#footnote-30) The CEDAW Committee’s General Recommendation No. 19 on violence against women from 1992 clearly states that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights [..].” [[31]](#footnote-31) The Human Rights Committee has also confirmed that the State has both negative and positive obligations- to refrain from violating human rights, but also to protect and fulfil human rights, including protecting against acts committed by private persons or entities.[[32]](#footnote-32)

The due diligence standard, which is a concept employed also in other areas of law, has become an important ‘measuring stick’ to assess whether a State is meeting its obligations, especially with regard to protecting individuals from human rights violations committed by private actors. For human rights law obligations, the standard serves as an assessment framework for determining whether the State has taken effective steps to fulfil its human rights obligations. The due diligence standard is an especially important tool when the potential human rights violation happens through a State’s failure to act, as it can be difficult to assess if an omission (failure to act) constitutes a violation or not, without having a normative basis for the appraisal. In addition to circumstances where State actors are directly committing human rights violations against women, violations of women’s rights by the State are often omissions, i.e. systematic failures to act to protect women from private violence, or systematic failures to prevent and punish violence against women.[[33]](#footnote-33) Non-discrimination is also a fundamental principle in applying the due diligence standard, requiring States to use the same level of commitment in relation to preventing, investigating, punishing and providing remedies for violations of women’s rights as they do for other violations of rights.[[34]](#footnote-34) For the mentioned reasons, the due diligence standard is paramount to the promotion and protection of women’s human as a tool for measuring State compliance.[[35]](#footnote-35)

## Universality of Human Rights

Universality and indivisibility of human rights have been widely endorsed by States and confirmed in a number of human rights declarations, treaties and documents throughout the years. The UDHR itself is grounded in the idea of the universality of human rights. The Vienna World Conference on Human Rights recognized that “the human rights of women and the girl child are inalienable, integral and indivisible part of universal human rights”, and confirmed that the universality of human rights is unquestionable, proclaiming that “all human rights are universal, indivisible, interdependent and interrelated”. This language was repeated and re-confirmed by States at the 4th World Conference on women held in Beijing in 1995.[[36]](#footnote-36)

Despite these commitments by States, the question of universality for human rights has often come up in the context of women’s human rights, when States have tried to justify violations of women’s rights in the name of culture. The Special Rapporteur on Violence Against Women (SRVAW) in her report on cultural practices within the family that are violent towards women[[37]](#footnote-37) uses e.g. female genital mutilation, so called ‘honour’ killings of women, son preference, witch hunting among others practices as examples of customs that have been defended under the pretext of being part of any given culture. Stereotypes and cultural norms which dictate prescriptive roles for women in society also have a negative impact on women’s enjoyment of their human rights. For instance, girls lack of access to education has sometimes been justified on the presumption that as mothers and wives, they will not enter the professional workforce and thus do not require education.

The academic debates on the meaning of universality of human rights have been extensive.[[38]](#footnote-38)

The universality of human rights and their validity in a given local context have often been contested through relativist discourses that brand them as external impositions that are incompatible with local culture.[[39]](#footnote-39) However, the Special Rapporteur on cultural rights has warned against discourses which essentialize cultural, disregarding the fact that culture is not static, and changes over time.[[40]](#footnote-40) She also points to the women’s lack of influence in decision making processes which purport to define the culture of any given community.[[41]](#footnote-41)

The CEDAW Convention, in Article 5(a) requires States to “take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. CEDAW Committee’s General Recommendation No. 19 comments on articles 2 (f), 5 and 10 (c), that attitudes and practices according to which women are subordinate with men uphold the subjugation of women in society, and thus undermine women’s human rights, gender equality and non-discrimination, mentioning the practices of family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. General Recommendation No. 19 also includes a comment on CEDAW Article 12 on the right to health, stating that certain traditional practices perpetuated by culture and tradition are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.[[42]](#footnote-42)

The Special Rapporteur on Violence Against Women in her report on intersections between culture and violence against women argues that it is possible to negotiate human rights with culture, challenging discriminatory and oppressive aspects of culture while retaining its positive aspects.[[43]](#footnote-43) She concludes that: “compromising women’s rights is not an option. Therefore, the challenge that confronts us today is to respect and prize our diverse cultures while developing common strategies to resist oppressive practices in the name of culture, and to promote and uphold universal human rights while rejecting encroachments grounded in ethnocentric thinking”.[[44]](#footnote-44)

The Independent Expert on Cultural Rights has also discussed the issue of interaction among the principle of universality of human rights, recognition and implementation of cultural rights and the need to respect cultural diversity.[[45]](#footnote-45) The Independent Expert views universal promotion and protection of human rights, including cultural rights on the one hand, and respect for cultural diversity on the other, as mutually supportive. Her report reiterates the Universal Declaration on Cultural Diversity and the Human Rights Council’s resolution 10/23 which states that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. According to the Independent Expert, not all cultural practices can be considered as protected under international human rights law, referring to CEDAW Article 5 on modifying the social and cultural patterns of conduct of men and women.[[46]](#footnote-46)

## Non-Discrimination and Equality between Women and Men

Non-discrimination and equality between women and men are central tenets of human rights law. ICCPR Article 2 prohibits discrimination inter alia on the basis of sex. Article 3 of ICCPR guarantees equal rights of men and women in the enjoyment of rights guaranteed under the Covenant. Similarly, ICESCR Article 2 prohibits discrimination in the enjoyment of ESC rights including on the basis of sex, and Article 3 guarantees equal rights of men and women in the enjoyment of rights guaranteed under the Covenant. Article 26 of ICCPR also provides for equality before the law and equal protection of the law.

This definition of discrimination in CEDAW encompasses a variety of possible discriminatory actions (any distinctions, exclusions or restrictions) either having the express purpose, or the actual effect, of discriminating against women. CEDAW goes further than other human rights treaties also in terms of describing in detail the State obligations and actions to be taken in order to achieve gender equality in practice. It not only requires equality between women and men, but also prohibits practices that can perpetuate women’s inequality.Substantive gender equality and formal gender equality, as well as de facto discrimination and de jure discrimination, are central concepts in the equality framework provided by CEDAW.

Discrimination and inequality can occur in different ways. Discrimination can occur through facially discriminatory provisions (de jure), such as when a law or policy restricts, prefers or distinguishes between certain groups, e.g. prohibiting women to drive, own land, or to inherit property. Ensuring formal equality requires eliminating all instances of de jure discrimination. While much progress has been made to eliminate discriminatory laws, many explicitly discriminatory laws persist and reforming these laws should be a matter of utmost priority for States to comply with their human rights obligations. [[47]](#footnote-47)

Aside from laws which are discriminatory on their face, laws, policies or programmes can also have much more complex, multi-faceted effects that can be detrimental to women, even though they appear to be gender-neutral, also known as de facto discrimination. For instance, aid programmes which distribute benefits to the “head of household” may not equally benefit women since men are often considered the head of a household. Or, a government lending scheme to buy land might be inaccessible to women due to its cost- even if the scheme is open to all, both men and women – given women’s disproportionate representation among those living in poverty.

A substantive understanding of gender equality recognizes that inequality exists, taking both historical inequalities and present conditions of women in a certain context into account. Substantive equality may consequently require positive action by the State to address the specific disadvantages and needs of women.[[48]](#footnote-48) The CEDAW Convention includes an understanding of substantive equality in its provisions. Already the definition itself speaks about the effects of laws and policies, recognizing that gender-neutral laws can have discriminatory effects and that formal equality is not enough to address them. CEDAW Convention Article 4 on temporary special measures, the CEDAW Committee’s General Comment No. 25 on the same topic, as well as Article 5 on modifying the social and cultural patterns of conduct of men and women, emphasises a commitment to substantive gender equality.[[49]](#footnote-49) In General comment No. 25, the CEDAW Committee explains that to achieve actual equality, the underlying causes of women’s inequality must be addressed, it is not enough to guarantee identical treatment with men. In the Committee’s view, the Convention requires that women be given an equal start and also that the State create an enabling environment for the empowerment of women in order to achieve equality of results (also referred to as equality of outcome). Equality of results is the logical corollary of de facto or substantive equality, according to the Committee. These results may be quantitative and/or qualitative in nature, e.g. women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.[[50]](#footnote-50) Through special measures, historical wrongs and inequalities are corrected by temporarily giving advantages to women, and giving them access to spaces and rights that traditionally have been out of their reach.[[51]](#footnote-51) Achieving substantive equality requires a change in attitudes, in gender roles and –stereotyping; a fundamental societal change which will lead to a change in women’s lived realities.

The Human Rights Committee (HRC) and the Committee on Economic, Social and Cultural Rights have also adopted the same principle of substantive equality when guaranteeing non-discrimination and equal enjoyment by men and women of civil and political, as well as economic, social and cultural rights.[[52]](#footnote-52)

The Committee on Economic Social and Cultural Rights explained in its General Comment 16 on unpaid women workers in rural and urban family enterprises that States Parties to the Covenant are obliged to eliminate both direct and indirect discrimination.[[53]](#footnote-53) States must refrain from engaging in discriminatory practices, must ensure that third parties do not discriminate in a forbidden manner, and take positive actions to guarantee women’s equality. It further outlines how the obligation to ensure equality relates to the different provisions of the Covenant.[[54]](#footnote-54) General Comment 20 (2009) on non-discrimination in economic, social and cultural rights also notes the importance of addressing both direct and indirect discrimination in laws, policies and practices and the effects of multiple discriminations, an issue which particularly affects women.

In its General Comment 28 on the equal rights of men and women, the Human Rights Committee explains that States Parties must not only remove obstacles to equality, but also have obligations to adopt positive measures to ensure equality. It further specifies that “States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights” It then outlines specific obligations to ensure women’s equal rights in relation to the various articles of the Covenant.

## Equality and Equity

The CEDAW Convention requires that women are accorded rights equal to those of men, and that women are able to enjoy all their rights in practice. While some have asserted that gender equity is the appropriate goal, in international agreements, language of gender equality has been maintained.

Some advocates of the term gender equity have premised this on stereotypes about women’s role in society, suggesting that women should be treated “fairly” in accordance with the roles that they carry out.[[55]](#footnote-55) This understanding has the danger of perpetuating unequal gender relations, and solidifying gender stereotypes that are detrimental to women. The CEDAW Committee has emphasised in its General Recommendations and Concluding Observations on different countries, e.g. in its General Recommendation No. 20 on core obligations of State parties under Article 2 of the Convention[[56]](#footnote-56), that “States parties are called upon to use exclusively the concepts of equality of women and men or gender equality, and not to use the concept of gender equity in implementing their obligations under the Convention. The latter concept is used in some jurisdictions to refer to fair treatment of women and men, according to their respective needs. {…} Inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices”. As the legal term used in the Convention, gender equality cannot be replaced by equity which is concept conditioned on subjective criteria.[[57]](#footnote-57)

Some stakeholders have also favoured the language of equity based on the misunderstanding that the term gender equality means same or identical treatment of men and women, rather than taking into account the actual circumstances of men and women. As explained above, substantive equality which is the standard to be met under human rights law, requires measures to achieve equality of results. This may mean that women and men are not always treated in exactly the same manner, in order to redress historical discrimination and/or to take account of women’s biological differences.

## Gender

Gender refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.[[58]](#footnote-58)

The term “gender” is not interchangeable with women. Sex is typically referred to when talking about the biological differences between men and women. Gender constructions are dynamic and fluid and they change over time and can be different in different cultures. As an example of socially learned differences, women’s role in most societies has traditionally been to take care of the household and the children, whereas the role of men has been to provide for the family by working outside the home. In most societies, these traditional perceptions of women’s and men’s roles have changed and are constantly evolving.

Analysing international law and international human rights law from a gender perspective is important, because gender analysis helps us understand how the experiences of males and females are influenced by differences such as age, class, religion, culture, and location. It highlights and explores hierarchical relations, unequal roles and relations between and among males and females, the unequal value given to women’s work, and women’s unequal access to power and decision-making as well as property and resources. Gender mainstreaming or integration is a process that helps assess the impact of different laws, policies and programmes on groups of men and women, as explained in the box below.

Box on Gender Mainstreaming

Gender mainstreaming (or integration) is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve equality between men and women. Gender integration as a strategy and methodology does not in theory mean an emphasis on women’s experiences. However in practice the implementation of gender integration often results in - given the socially constructed differences and relations between males and females in most of the world’s societies - a specific focus on women because they are mostly adversely affected by existing gender inequalities.

Gender is also an important term to understand in the context of gender identity.[[59]](#footnote-59) Gender identity is the gender that one sees themselves as being, which may or may not conform with their biological sex. Gender identity is a separate issue from sexual orientation which refers to which sex one is attracted to – for instance masculine women and feminine men are not necessarily homosexual.

## F. Intersectionality and Multiple Forms of Discrimination

Women are not a homogenous group. Multi-level and intersecting forms of discrimination have always existed, although only more broadly acknowledged in the past decades. Increasingly, several different types of multiple discrimination are recognised, as various groups of women have raised their concerns about how the dimensions of their identity affect their experiences of disadvantage and exclusion. Age, socio-economic status, racial or ethnic background, religion, national origin, citizenship, status, health, particularly HIV/AIDS and disability, as well as poverty and sexual orientation, are examples of factors that can impact upon the complex and multidimensional character of discrimination. [[60]](#footnote-60) Frequently, women experiencing multiple forms of discrimination face increased possibilities that their human rights will be violated.

The 1995 Fourth World Conference on Women, held in Beijing, recognized that “Many women face additional barriers to the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability or socio-economic class or because they are indigenous people, migrants, including women migrant workers, displaced women or refugees.”[[61]](#footnote-61) In the Durban Declaration and Programme of Action, States declared that they “are convinced that racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights.” States further recognized “the need to integrate a gender perspective into relevant policies, strategies and programmes of action against racism, racial discrimination, xenophobia and related intolerance in order to address multiple forms of discrimination.”[[62]](#footnote-62)

The Committee on the Elimination of Racial Discrimination has also addressed the gender-related dimensions of racial discrimination, adopting a General Comment on this issue in 2000, in which it notes that: “racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life”.[[63]](#footnote-63)

The CEDAW Committee has also, in its General comment on temporary special measures, emphasised that States should address multiple discrimination against women through adopting temporary special measures.[[64]](#footnote-64) The Convention on the Rights of Persons with Disabilities is the first binding human rights treaty to explicitly address multiple discrimination against women and girls in its provisions, requiring States to take measures to ensure the equal enjoyment of all human rights and fundamental freedoms for women and girls with disabilities.[[65]](#footnote-65)

The Special Rapporteur on Violence Against Women (SRVAW) has recognised the need to apply an inter-sectional analysis when researching gender-based violence, consistently adopting an intersectional framework to demonstrate different categories of discrimination of women.[[66]](#footnote-66) In a recent report on multiple and intersecting forms of violence against women, the SRVAW argues that the elimination of violence requires holistic measures that address both inter-gender and intra-gender inequality and discrimination. This means that in analysing gender-based violence, factors such as geographic location, level of education, employment situation, household size, marital relationships, and access to political and civic participation, race, skin colour, intellectual and physical abilities, age, language skills and fluency, ethnic identity and sexual orientation, which when combined increase the vulnerability of women and girls to discrimination and violence, have to be taken into account.[[67]](#footnote-67)

# The Human Rights Framework in Practice

The ensuing chapters examine specific areas where women’s human rights are particularly relevant. Since women constitute half of the world’s population, and are entitled to all human rights on an equal basis with men, this publication does not aim to cover every human rights issue which touches women’s lives. The focus areas of these chapters are: public and political life, sexual and reproductive health and rights, the right to an adequate standard of living, violence against women, migration, conflict and crisis, and access to justice. Across all of these areas, education and the family context are particularly pertinent, and thus these issues are addressed throughout.

The right to education is recognized in CESCR article 13, CRC article 28, CEDAW article 10 and CRPD article 24. Besides calling for non-discrimination in the enjoyment of the right to education and free universal primary education, human rights law also requires that States undertake necessary measures to address the particular obstacles that girls and women face to access education, such as early marriages, pregnancies, child labour and violence. The needs of girls suffering from multiple forms of discrimination –e.g. with disabilities, from poor or rural areas and belonging to minority communities- should also be considered. Ensuring gender equality in the area of education requires allocation of financial resources, as well as continued awareness raising efforts about the importance of girls’ education.

The right to equality between men and women in marriage and family life is also recognized in various human rights instruments, including the UDHR, ICCPR, CEDAW the Convention on the Nationality of Married Women and the Convention on Consent to marriage, Minimum Age for marriage and Registration of marriages. In spite of such recognition, women lag behind men in the enjoyment of rights related to the private sphere. In many countries, women are forced to enter marriage, they do not enjoy the same rights with regard to guardianship and adoption, they are not allowed to transfer nationality to their children and husbands and they do not have equal legal capacity. CEDAW Article 16 requires States to undertake “appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”. This includes ensuring the same right to enter into marriage with free and full consent and to freely choose a spouse, the same rights and responsibilities during marriage and its dissolution and with respect of their children and the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation. Rights related to access to property and sexual and reproductive health that will be examined separately in this chapter are also covered by this provision. The CEDAW Committee has called on States to resolutely discourage any notions of inequality of women and men in the private sphere which are affirmed by laws, religion or customs. The Committee has also noted that States should prohibit polygamous marriages as they contravene a woman’s right to equality with men and can have serious emotional and financial consequences for her and her dependents. [[68]](#footnote-68)

## Women’s Rights in Public and Political Life

Historically, women have been excluded from political life and decision-making processes. Women’s campaigns for participation in the public and political arena date back to the nineteenth and twentieth centuries and continues today.

At the time of World War I it was exceptional for parliamentary democracies to have recognised women’s right to vote. In 1945 when the UN was established, more than half of the fifty-one nations that ratified the UN Charter did not allow women to vote or allowed them restricted voting rights only.[[69]](#footnote-69)

The Universal Declaration of Human Rights (UDHR) stated that everyone has the right to take part in the government of his or her country. One of the first tasks of the Commission on the Status of Women, which was created in 1946, was to write the Convention on the Political Rights of Women (adopted in 1952).[[70]](#footnote-70) The CEDAW Convention builds on previous conventions and its Article 7 concerns women’s access to decision making in the political and public domains. CEDAW Article 7 guarantees the right of women to vote in all elections, public referenda and to be eligible for election to all publicly elected bodies, the right to participate in the formulation of government policies and their implementation, to hold public office and perform all public functions at all levels of government, and the right to participate in non-governmental organisations (NGOs) or associations concerned with the public and political life of the country. CEDAW Article 8 requires that States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Very few countries have made reservations to Article 7, especially concerning the right to vote. In practice however, the right to vote can sometimes be merely a formality when other conditions make it virtually impossible or very difficult for both men and women to vote, such as the absence of free and fair elections, violations of freedom of expression, or lack of security which tends to affect women disproportionally. In some countries, women cannot register to vote because they are missing a birth certificate or identity papers that are issued only to men. Other obstacles such as stereotyping and traditional perceptions of roles of men and women in society, as well as lack of access to relevant information also inhibit women’s possibilities or willingness to exercise their right to vote fully.[[71]](#footnote-71) Traditional working patterns of many political parties and government structures continue to be barriers to women’s participation in public life, and women may be discouraged from seeking political office because of their double burden of work and the high cost of seeking and holding public office, in addition to discriminatory attitudes and practices.[[72]](#footnote-72) In almost every country that has ratified CEDAW there is no legal bar to the eligibility of women, but women remain seriously under-represented at all levels of government.

The Beijing World Conference on Women in 1995 and its Declaration and Platform for Action, deals extensively with the issue of women in power and decision making. Through the Declaration and Platform for Action (BDPA), States commit to taking concrete measures to ensure women’s equal access to and full participation in power structures and decision-making, and to increase women’s capacity to participate in decision-making and leadership, in accordance with the detailed recommendations of the BDPA.[[73]](#footnote-73)

Review reports of the progress made five years after the Beijing conference and Declaration and Platform for Action by the Inter-Parliamentary Union (IPU) and the UN Development Programme shows that much is left to be done. The Beijing Platform for Action sets the objective of achieving a balance between women and men in national decision making positions. Five years after Beijing, the level of women in parliaments in the world had increased from 10 per cent to 12 per cent but regional variations were significant, ranging from 37.6 per cent in the Nordic countries to 15.5 per cent in the Americas, 13.4 per cent in Asia, 12.5 per cent in Europe excluding the Nordic countries, 11.6 per cent in Sub-Saharan Africa, 8.3 per cent in the Pacific and 3.3 per cent in the Arab states.[[74]](#footnote-74) According to IPU, the global average of women present in parliaments of 187 nations is 19,6 per cent as of 2012.[[75]](#footnote-75) A survey by IPU shows that after Beijing, some changes in attitudes and awareness have taken place, but this has yet to lead to significant changes in practice for women’s equal access to public and political life.

The UN Millennium Development Goals (MDGs) for 2015 and especially goal three on gender equality and women’s empowerment, entails a commitment by States to promote mechanisms that give women a voice in politics and governance institutions. Reviews of the progress achieved on the MDGs shows that women are slowly gaining political power, mainly thanks to quotas and special measures. Regional variations however remain.[[76]](#footnote-76)

The CEDAW Committee has clarified that the term “special measures” can encompass a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes, allocation and/or reallocation of resources, preferential treatment, targeted recruitment, hiring and promotion, numerical goals connected with time frames, and quota systems. These measures should be adopted by States with a view to achieving substantive gender equality which is required by the Convention.[[77]](#footnote-77)

There are different forms of quota systems that have been adopted by States, of which the most common ones are political party quotas, legislative quotas and reserved seats. Political party quotas are usually voluntary, party-specific and put in place to increase the number of women party candidates or elected representatives, through setting a percentage or proportion of women. Legislative quotas are binding national policies that are enforced though legislation, requiring all political parties to include a certain number of women in their lists of candidates for elections. Another method is to reserve a number of seats for women in parliament through a national policy, which ensures a certain number of female legislators.[[78]](#footnote-78) After the Beijing World Conference, gender quotas have increasingly been adopted by States, with the objective to counter discrimination and increase the slow phase by which numbers of women in politics are rising. These measures are meant to correct some of the obstacles that still prevent women’s equal access to politics, especially institutional and systemic barriers.

However, these measures, if adopted in isolation, are usually not enough to ensure equality, and they require adaptation to the local context.[[79]](#footnote-79) Quotas for women have often been criticized for various reasons, e.g. when the women elected are chosen by political parties or leaders, so their accountability would be more towards them than their electorate, or that quotas put more emphasis on gender than on actual merits.[[80]](#footnote-80) Quotas for women need to be coupled with other measures to create an enabling environment for women to be able to participate. Particularly, the positive impacts of increasing women’s representation in public and political life will not be felt if the women who gain access are not also empowered to actively participate in the discussions, and exercise influence in decision making.[[81]](#footnote-81) Recent studies show that achieving the 30 % ‘critical mass’ of women in national legislatures depends on a number of complex factors. Interestingly, it is in non-industrialized nations that the adoption of quotas has increased remarkably the past 15 years, much thanks to mobilization by women’s movements, but also a number of other factors such as dealing with the aftermath of conflict.[[82]](#footnote-82)

Participation in public life however is much broader than elections or being elected for public office.[[83]](#footnote-83) The CEDAW Committee has explained that CEDAW’s Article 7 extends to all areas of public and political life and is thus not limited to areas specified in the Article itself. According to the Committee, political and public life of a country is a broad concept, and can refer to the exercise of political power, in particular legislative, judicial, executive and administrative powers, all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. Women’s right to participation also includes participating in civil society, public boards, local councils and the activities political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life. The Committee emphasises States’ responsibility to appoint women to senior leader positions, at all levels (local, national, international) of government, all government bodies, the judiciary, and to encourage political parties to do the same. States should ensure women’s access to information, and take measures to overcome barriers such as illiteracy, language, poverty and barriers to women’s freedom of movement.[[84]](#footnote-84)

Women’s participation specifically in the field of peace building and peace making processes is particularly important if post-conflict societies are to be rebuilt based on respect for human rights and democratic values. UN Security Council Resolution 1325 and its follow up resolutions and reports on women, peace and security, recognize women’s important contribution to peace and calls for increased representation of women at all levels of decision making, in all mechanisms for the prevention, management and resolution of conflicts. This topic is dealt with more in-depth by chapter VI e. on conflict and women’s rights/Women’s Participation in Peace Processes and Role as Agents of Change.

*Women Human Rights Defenders*

Women who work as Human Rights Defenders (WHRDs) are among the many women working to promote and protect human rights worldwide. The Special Rapporteur on the situation of human rights defenders analyses the issue of women human rights defenders including both female human rights defenders, and any other human rights defenders who work in the defense of women’s rights or on gender issues.[[85]](#footnote-85) The Declaration on Human Rights Defenders (HRDs) recognizes the important role of HRDs, including women defenders, and outlines relevant rights of all HRDs and obligations of States.[[86]](#footnote-86) Women defenders are subject to the same types of risks as any human rights defender, but as women, they are also targeted for or exposed to gender-specific threats and gender-specific violence.[[87]](#footnote-87) The reasons behind the targeting of WHRDs are multi-faceted and complex, and depend on the specific context in which the individual WHRD is working in. Often, the work of WHRDs is seen as challenging traditional notions of family and gender roles in the society, which can lead to hostility by the general population and authorities. Due to this WHRDs are subjected to stigmatization and ostracism by community leaders, faith-based groups, families and communities who consider them to be threatening religion, honour or culture through their work. In addition, the work itself or what they are striving to achieve (for instance, the realisation of women’s rights or any gender-related rights) also makes them targets for attack. Their families also become targets for threats and violence, aiming to discourage WHRDs from pursuing their work. The Special Rapporteur on human rights defenders has acknowledged that women defenders are more at risk of being subject to certain forms of violence and other violations, prejudice, exclusion, and repudiation than their male counterparts.[[88]](#footnote-88)It is therefore important to recognise the specific challenges this group of defenders face, in order to strengthen protection mechanisms and other, both local and international level responses to their specific concerns.

States should put in place national level mechanisms to ensure the protection and safety of women human rights defenders, in accordance with their duty to protect and fulfil human rights and their due diligence accountability for actions by private actors. The situation in practice however often leaves WHRDs without effective protection mechanisms. The UN has mechanisms women defenders can turn to with protection concerns, such as the Special Rapporteurs, treaty bodies, through e.g. action alerts or urgent appeals. Urgent appeals can also be addressed to international human rights action alert networks, and various responses such as emergency grants and temporary relocation programmes have been developed by different organisations. [[89]](#footnote-89)

Although the State has the primary responsibility to protect defenders when they are threatened and attacked, the international community as well as the UN presences on the ground also have a responsibility to support and protect them, bearing in mind the basic principles of confidentiality, do no harm, the informed consent of a person.

*The right to nationality*

Women’s ability to participate in public and political life is integrally related to their ability to claim citizenship and nationality related rights. CEDAW Article 9 calls on States to “grant women equal rights with men to acquire, change or retain their nationality” and to “ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.” It also requires States to “grant women equal rights with men with respect to the nationality of their children”. The CEDAW Committee has explained that nationality is critical to full participation in society and that lack of nationality has a serious impact on the enjoyment of other rights such as the right to vote, stand for public office, access public benefits and choice a residence. CEDAW Article 15 requires States to “accord to women equality with men before the law” as well as identical legal capacity in civil matters. The CEDAW Committee has further explained that any restriction in this field seriously limit the woman’s ability to provide for herself and her dependents. The Committee has also noted with concern the high number of reservations to article 9, 15 and 16 and called on States to withdraw them and to enact and enforce legislation in accordance with these articles.

## Sexual and Reproductive Health and Rights

Women’s sexual and reproductive health is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination. The Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women have both clearly indicated that women’s right to health includes their sexual and reproductive health. This means that States have obligations to respect, protect and fulfil rights related to women’s sexual and reproductive health. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health maintains that women are entitled to reproductive health-care services, goods and facilities that are: (a) available in adequate numbers; (b) accessible physically and economically; (c) accessible without discrimination; and (d) of good quality.[[90]](#footnote-90)

Despite these obligations, violations of women’s sexual and reproductive health rights are frequent. These take many forms including denial of access to services that only women require, or poor quality services, subjecting women’s access to services to third party authorization, and performance of procedures related to women’s reproductive and sexual health without the woman’s consent, including forced sterilization, forced virginity examinations, and forced abortion. Women’s sexual and reproductive health rights are also at risk when they are subjected to female genital mutilation (FGM) and early marriage.

Violations of women’s sexual and reproductive rights are often deeply engrained in societal values pertaining to women’s sexuality. Enshrined patriarchal concepts of women’s roles within the family mean that women are often valued based on their ability to produce children. Early marriage and pregnancy, or repeated pregnancies spaced too closely together, often as the result of efforts to produce male offspring because of the preference for sons, has a devastating impact on women’s health with sometimes fatal consequences. Women are also often blamed for infertility, suffering ostracism and being subjected various human rights violations as a result.

CEDAW (article 16) guarantees women equal rights in deciding “freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.” CEDAW (article 10) also specifies that women’s right to education includes “access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.” Furthermore, sexual and reproductive health is considered vital elements of the right to the highest attainable standard of physical and mental health. Women’s child-bearing role can also have an impact on their enjoyment of other rights such as the rights to education and work.

The Beijing Platform for Action states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence”[[91]](#footnote-91). The CEDAW Committee’s General Recommendation 24 recommends that States prioritise the “prevention of unwanted pregnancy through family planning and sex education.”[[92]](#footnote-92) CESCR has explained that the provision of maternal health services is comparable to a core obligation which cannot be derogated from under any circumstances, and the States have to the immediate obligation to take deliberate, concrete, and targeted steps towards fulfilling the right to health in the context of pregnancy and childbirth.[[93]](#footnote-93)

Reproductive health is defined in the Cairo Programme for Action as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.”[[94]](#footnote-94) The former Special Rapporteur on the right to the highest attainable standard of physical and mental health has defined sexual health a state of physical, emotional mental and social well-being related to sexuality, not merely the absence of disease, dysfunction or infirmity.[[95]](#footnote-95) This definition is based on the recognition in the Cairo Programme for Action that the purpose of sexual health “is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases.”[[96]](#footnote-96) Thus sexual health and reproductive health are related but distinct topics. Sexual rights and reproductive rights are similarly related but distinct.

*Access to information about sexual and reproductive health*

Women’s right to decide freely and responsibly the number and spacing of their children, and to have access to the information, education and means to exercise these rights requires attention to women’s access to information regarding modern methods of contraception and comprehensive sexuality education. According to UNFPA, in 2008, there were 1.4 billion women of reproductive age (between 15 and 49) and more than half of these women, 818 million, wanted to avoid a pregnancy. Of those women wanting to avoid a pregnancy, 603 million are using modern contraceptive methods, and 215 million are not. Unintended pregnancies are overwhelmingly attributable to unmet need for modern contraception. Of those women becoming pregnant unintentionally, 66 per cent were not using any method of contraception, and 16 per cent relied on traditional methods such as periodic abstinence and withdrawal, which have higher rates of failure than modern methods. Women and girls’ susceptibility to contracting HIV and other sexually transmitted diseases is another serious consequence of not using modern contraception.

Women’s lack of access to information relating to contraception has a direct impact on their right to decide on the number and spacing of their children, as well as their right to health. The CEDAW Committee has explained that “[i]n order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention.”[[97]](#footnote-97) Such information should be scientifically accurate and free from discrimination. While practitioners have a right to conscientious objection, protection of that right must not infringe on women’s right to access to accurate and objective information regarding contraception. The European Court of Human Rights for instance has held that pharmacists may not refuse to sell contraceptives based on personal religious beliefs.[[98]](#footnote-98) The Committee on the Rights of the Child in its General Comment on Adolescent Health and Development has specified that “States parties should ensure that [adolescents] have access to appropriate information [on sexual and reproductive issues, including family planning, contraception, and the prevention of sexually transmitted diseases], regardless of their marital status and whether their parents or guardians consent.”[[99]](#footnote-99)

*Access to services and medicines*

Ensuring that women have access to services which are only required by women is a key aspect of eliminating discrimination against women. Guaranteeing the availability, accessibility, quality and acceptability of these services and medicines is central to ensuring women’s sexual and reproductive health rights. The CEDAW Committee has further specified that “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women, highlighting “laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures” as barriers to women’s access to health care.[[100]](#footnote-100)

it is estimated that 287,000 women died in childbirth in 2010. In addition, every year an estimated 10 million women suffer a pregnancy-related injury, infection or disease, in some cases long term disability. [[101]](#footnote-101) Ensuring universal access to skilled attendance at childbirth, emergency obstetric care, postpartum care, preventing unsafe abortion, and widening contraceptive choices are some of the interventions which have been shown to reduce maternal mortality and morbidity.[[102]](#footnote-102)

In the case of *Alyne v. Brazil* (CEDAW Committee communication No. 17/2008, 25 July 2011), the victim, a woman of African descent, died after a stillbirth and serious postnatal complications. Failures in diagnosing the complications suffered by the victim, delays in treating those complications, delays in referring her to a hospital with superior facilities, and failures in the transmission of her records between health facilities, followed by lack of adequate response and redress for these failures resulted in a finding of violations of the Convention.

The CEDAW Committee found violations of the victim’s rights to health (Article 12, in relation to access to health), Article 2 (c) in relation to access to justice, and Article 2 (e) in relation to the State parties due diligence obligation to regulate private health service providers read in conjunction with Article 1 (non-discrimination). The Committee underlined in its decision that the State is directly responsible for the actions of its private medical institutions when it outsources its medical services, and that States maintain a duty to regulate and monitor private health care institutions in line with due diligence obligations of the State. The Committee further noted that the State must ensure that its maternal health services meet the specific needs of women, that policies on maternal health are implemented in practice, and that there are adequate judicial remedies and effective protection provided without discrimination.[[103]](#footnote-103)

Ensuring access to safe and affordable reproductive health services includes the need to ensure access to safe and affordable abortion. Although access to modern contraceptive methods and family planning reduce the risk of terminating a pregnancy, no contraceptive method is 100 per cent guaranteed. The work of human rights mechanisms indicates that States should ensure access to abortion at least where there is a threat to the woman’s life or health, or where the pregnancy is the result of rape or incest.[[104]](#footnote-104) The CEDAW Committee has also stated that “when possible, legislation criminalizing abortion could be amended to remove punitive provisions imposed on women who undergo abortion.”[[105]](#footnote-105) Decriminalization of abortion services was emphasized in the Beijing Platform for Action as well, which recommended that States to consider reviewing laws containing punitive measures against women who have undergone illegal abortions.[[106]](#footnote-106) In all circumstances, access to post abortion health services must be accessible, safe and affordable. Unsafe abortion is a leading cause of maternal mortality and morbidity, and thus, ensuring that abortion services are accessible and safe is also an important part of State obligations to ensure that women are enabled to survive pregnancy.

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| ***Relevant treaty body jurisprudence on abortion***  ***V.D.A., on behalf of her daughter, L.M.R., v. Argentina (HRC, 29 March 2011)***  LMR was a minor girl with an intellectual disability, who had become pregnant as a result of rape by her uncle. She was denied legal abortion, and the HRC found a violation of Article 7 (torture or other inhumane or degrading treatment) by the State’s omission for failing to guarantee LMR her right to a termination of pregnancy (which in the case would have been in accordance with Argentinian law) since the failure had “caused L.M.R. physical and mental suffering constituting a violation of article 7 of the Covenant that was made especially serious by the victim's status as a young girl with a disability.” HRC called on the State party to provide the victim with adequate compensation and redress.[[107]](#footnote-107)  ***Karen Noelia Llantoy Huamán v. Peru (HRC, 22 November 2005)***  KL was a 17 year old girl whose fetus was determined to have a condition which would prevent its survival for more than a few days following birth. She requested an abortion, but the service was denied since abortion was legal only to save the mother’s life but not in cases of fetal impairment. KL had to see the pregnancy to full term, and then was made to breast feed the baby which died four days after birth. In finding a violation of article 7, the Human Rights Committee found that the depression and emotional distress of the 17 year old girl were foreseeable consequences of the State’s failure to enable her to undergo a therapeutic abortion, according to the Committee. (Note State Party did not cooperate in the proceeding.)[[108]](#footnote-108)  ***L.C. vs. Peru (CEDAW Committee, 17 October 2011)***  LC was a minor girl, victim of sexual abuse, who had attempted suicide when she had found out that she had become pregnant as a result of the abuse. She survived but sustained serious injuries including to her spinal column that required urgent surgery. She and her mother requested legal abortion so that the operation could proceed. This was denied by a hospital, claiming that the victim’s life was not in danger. Finally after 3.5 months and having miscarried, she had the surgery but she is currently paralyzed from the neck down having regained only partial movement in the hands. The Committee found a violation of her right to health, since the decision on the abortion had not taken sufficiently into account the damage of the decision on LCs mental and physical health. Her health would have required access to both the surgery and the therapeutic abortion, which was even more evident due to the circumstances (her age, the suicide attempt and sexual abuse).[[109]](#footnote-109) |

*Consent*

Ensuring women’s sexual and reproductive health rights means that women’s capacity to make their decisions regarding their bodies must be respected. Requirements of third party consent for access to certain services has been consistently criticized by human rights mechanisms as contrary to women’s rights.[[110]](#footnote-110) For instance, the Human Rights Committee deems legal provisions requiring the husband’s consent for a woman to undergo sterilization as violations of the woman’s right to privacy.[[111]](#footnote-111)

According to the CEDAW Committee, compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.[[112]](#footnote-112) In A.S v. Hungary, it was alleged that a doctor in a public hospital performed a forced sterilization procedure on a patient without providing adequate information to gain the patients consent.[[113]](#footnote-113) The CEDAW Committee found a violation of the petitioner’s right to equality in education, especially regarding information pertaining to family planning, the right to equality in accessing health care, and the right to equality in the family, especially regarding the right to decide the number, spacing and timing of children.

Persons with disabilities face particular risks of being subjected to involuntary medical procedures pertaining to their sexual and reproductive health. Article 23 of the Convention on the Rights of Persons with Disabilities reinforces the right of people with disabilities to found and maintain a family and to retain their fertility on an equal basis with others. Article 12 reaffirms the right of persons with disabilities to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others, including access to the support they may require to exercise their legal capacity. Article 25 clearly articulates that free and informed consent should be the basis for providing health care to persons with disabilities. The Committee on the Rights of Persons with Disabilities recommended “the abolition of surgery and treatment without the full and informed consent of the patient” in one of its first recommendations to a state party.[[114]](#footnote-114)

*The right to a safe and healthy pregnancy*

Complications during pregnancy and childbirth are a leading cause of death and disability among women of reproductive age in developing countries. “There is no single cause of death and disability for men between the ages of 15 and 44 that is close to the magnitude of maternal mortality.”[[115]](#footnote-115) The World Health Organisation (WHO) defines maternal death as the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes.[[116]](#footnote-116) Maternal morbidity is defined as “a condition outside of normal pregnancy, labour and childbirth that affects a woman’s health during those times.”[[117]](#footnote-117)

States are obligated under international human rights law to respect, protect and fulfil human rights in relation to surviving pregnancy and childbirth. When women die in childbirth due to preventable causes, many human rights obligations of the government come into play- e.g. to ensure women’s right to life, States need to ensure that available resources are used and that necessary measures are taken to ensure the availability, accessibility, acceptability and good quality of above-mentioned services, including ensuring their affordability. Preventable maternal deaths can also entail violations of the right to the highest attainable standard of physical and mental health, including sexual and reproductive health, rights to equality and non-discrimination, rights to information and education and to enjoy the benefits of scientific progress. [[118]](#footnote-118)

Applying a human rights based approach to maternal mortality and morbidity entails *inter alia* looking at preventable maternal mortality and morbidity through a lens of equality and non-discrimination, analysing State obligations under human rights law as well as existing gaps in protection, participation and accountability. The human rights based approach facilitates reaching specific groups of women who are excluded from access to essential health services.[[119]](#footnote-119)

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| A Human Rights-based approach to maternal mortality  The Human Rights Council has requested the Office of the High Commissioner for Human Rights to prepare a series of reports on maternal mortality and morbidity as a human rights issue. In the first report in 2010, the High Commissioner outlined 7 important principles of a human rights based approach: non-discrimination, accountability, participation, transparency, empowerment, sustainability, and international cooperation.[[120]](#footnote-120) In 2011, a compilation of good practices was presented, in which the High Commissioner observed five common features of good practices related to the reduction of maternal mortality and morbidity in line with human rights obligations : Enhancing the status of women by removing barriers to an effective human  rights-based approach to eliminate maternal mortality and morbidity, ensuring sexual and reproductive health rights, strengthening health systems to increase access to and use of skilled care, addressing unsafe abortion, and improving monitoring and evaluation.  In 2012, the High Commissioner prepared technical guidance on the application of a human rights based approach to policies and programmes for the reduction of preventable maternal mortality and morbidity. The guidance is aimed principally at policy makers seeking to design maternal health policies in accordance with human rights requirements. It follows the policy cycle of planning, budgeting, implementation, monitoring and accountability, including details of the required steps from a human rights perspective at each stage. |

## Women’s Right to an Adequate Standard of Living

Article 11 of the International Covenant on Economic, Social and Cultural Rights (CESCR) on the right to an adequate standard of living mentions the right to adequate food, clothing and housing, and the continuous improvement of living conditions as part of the right to an adequate standard of living for oneself and one’s family. Women’s rights to land, property, food, water and sanitation, as well as work and social security are intrinsically linked to the right to attain an adequate standard of living. All these rights are guaranteed under international human rights law, including the right to enjoy these rights on an equal basis with men, without discrimination. Women’s access to services, to education and to productive resources is paramount to the realization of the mentioned rights.

*Land, property, housing*

Rights to land, housing and property are essential to women’s equality and wellbeing.

Women’s rights in, access to and control over land, housing and property is a determining factor in women’s living conditions especially in rural economies, essential to women and their children’s daily survival, economic security and physical safety.[[121]](#footnote-121) Despite the importance of these rights for women and women headed households, women still disproportionally lack security of tenure.[[122]](#footnote-122) Women’s lack of security of tenure is often due to the fact that registration of property is done in a man’s name; the father, husband or brother. In case of separation or divorce, the man often retains rights to the property or land whereas the woman becomes homeless or will have to share the property with her in-laws without gaining control or rights over it.

Discriminatory legislation on and lack of control over property, land and housing also mean that women are excluded from community decision making processes that are led by men who normally are the landowners. In rural communities, ownership of land determines both social status and the way in which control is exercised over a household’s resources and income. Women’s disadvantaged economic position in this regard creates a structural dependence on men for access to resources, which in turn can subject women to insecurity and violence.[[123]](#footnote-123)

Cultural and religious practices, as well as customary practices, also can have an impact on women’s rights related to land, property and housing. These practices often exist in parallel with statutory laws. [[124]](#footnote-124) These often discriminate against women in the fields of property, land and housing and sometimes trump national laws (these practices are never codified but can in practice supersede laws for instance when implemented at the local level or when used as interpretation of statutory laws). This happens in particular in rural areas, where customs and practices still shape and influence family matters and determine the position of women. Most often, these customs or practices make women’s access to or control over land, property and housing dependant on a man- the husband, father or brother. In practice, statutory laws are interpreted through customary laws or practices to the detriment of women’s rights by judges, politicians or traditional leaders and local authorities.[[125]](#footnote-125) Customary forums for decision making are normally dominated by men. Women often have no access to participation in decision making with respect to land, property and housing even though these issues affect women directly and seriously. Gender bias within the official administration also leads to the exclusion of women from e.g. decision making on policies and programmes on housing and land.[[126]](#footnote-126)

Women suffering from multiple forms of discrimination – e.g. older women, women with disabilities, women living with HIV/AIDS or women belonging to minority communities or indigenous groups- face additional obstacles in accessing land and property. For instance, widows, often older women, in some places are blamed for killing their husbands by infecting them with HIV/AIDS and in-laws use this as a justification to dispossess them and evict them. Women then lose access to productive resources which were all the more important in the context of their need for medical care.

The Beijing 1995 Platform for Action includes commitments by States to “undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology.”[[127]](#footnote-127) The UN Habitat II Conference in Istanbul in 1996 and its Istanbul Declaration and Habitat Agenda provides a Plan of Action on rights, including rights of women in human settlements development. It commits governments to assure security of tenure and equal access to land of all people, including women and people living in poverty.[[128]](#footnote-128)

Access to land and housing is governed through land tenure systems. Land tenure is the relationship, whether legally or customarily defined, among people, individuals and groups, with respect to land.[[129]](#footnote-129) According to the Committee on Economic, Social and Cultural Rights (CESCR), tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.[[130]](#footnote-130)

Universal Declaration on Human Rights (UDHR) Article 17 (1) and (2) establishes the right of everyone to property regardless of sex, UDHR Article 25 the right to an adequate standard of living including housing and to security in the event of a lack of livelihood, and UDHR Article 16 states that everyone should have equal rights as to marriage, both during the marriage and during its dissolution. ICCPR’s broad non-discrimination provision Article 26 also outlaws legislation or policy that would discriminate against women, including in the fields of property, housing and land rights. ICESCR Article 11 guarantees the right to adequate housing. Furthermore, the CEDAW Convention specifically requests States to undertake all appropriate measures to eliminate discrimination against rural women, and to guarantee their enjoyment of adequate living conditions including adequate housing (CEDAW Article 14.2). CEDAW Article 16.1 requests States to undertake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family, and in particular to ensure the same rights for spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.[[131]](#footnote-131)

Women are disproportionately affected by forced evictions, protection against which is a key element of security of tenure and the right to adequate housing. Eviction can only take place under certain very exceptional circumstances and under strict criteria imposed by international law. States have to take certain measures to comply with international standards in case of evictions, *inter alia* adopt and implement special measures to protect women from evictions, e.g. by conferring titles to land and housing to women. States have to assess the differentiated impact of evictions on women so that the specific impact on women is appropriately addressed. Women have equal rights to all relevant information, full consultation and participation throughout the entire process of eviction. In the event of eviction, remedies and compensation should be equally available to women and States should ensure that they are not subject to discrimination or to sexual or gender based violence during evictions or after, as a consequence of eviction. Women must be co-beneficiaries of any compensation packages, and widows or single women are entitled to their own compensation.

*Violence against Women and their right to housing*

Research has demonstrated the links between domestic violence and women’s right to adequate housing and this has been highlighted throughout the work of the Special Rapporteurs on Violence against Women and on the Right to Adequate Housing. If women’s right to adequate housing is not sufficiently protected, women become more vulnerable to violence. Domestic violence has been found to be a leading cause of women’s (and often their children’s) homelessness, and many women try to avoid homelessness by staying inin abusive relationships. Women who are property or land owners experience less domestic violence, which points to the importance ofguarannteeing women’s security of tenure.

Assumptions that a woman has to ‘leave’ an abusive home instead of removing the abusive husband and the lack of support for removing the abusive partner by local authorities, community and/or family laws and regulations, greatly undermine women’s right to adequate housing as well as women’s right to live a life free of violence. Overcrowding, poverty and unemployment also impact the mentioned rights and affect directly both the level of violence and sexual abuse in homes and communities. In addition, insufficient protection for victims of domestic violence including insufficient shelter homes, legal aid and information to women about their rights have an impact on the level of domestic violence and women’s homelessness. Consequently, all these issues should be addressed by States as issues of women’s rights to property, land, housing, life, personal security, gender equality and being free from violence and discrimination.

A.T v. Hungary, CEDAW Committee 25 January 2005

In the domestic violence case A.T. v. Hungary, the Committee ruled that shelter homes should always be available to provide effective protection for victims of domestic violence. Furthermore, the State party was called upon to take immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family and ensure that A. T. is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights.

*Food, water and sanitation*

Rights to food, water and sanitation are equally crucial for women’s wellbeing, dignity and enjoyment of other human rights. Poor female nutrition early in life reduces learning potential and productivity, and increases reproductive and maternal health risks. This undermines attempts to eliminate gender inequalities throughout a woman’s life span, having an effect on issues such as women’s access to resources. Investing in women’s nutrition improves the overall development capacity of a country, considering the role women have in the household with regard to food production, food preparation and childcare.[[132]](#footnote-132) Women’s and girl’s disadvantaged health status and their traditional role in water collection and sanitation management in many societies impact women in negative ways, and it has been recognised that a lack of water and sanitation disproportionately affect women and girls. Women and girls have greater need for privacy when using toilets and when bathing, especially when menstruating, and in addition inaccessible toilets and bathrooms make them more vulnerable to rape and other forms of gender-based violence.[[133]](#footnote-133)

Article 11.1 of ICESCR recognizes the right to food, while Article 11.2 recognizes that more immediate and urgent steps may be needed to ensure “the fundamental right to freedom from hunger and malnutrition.” The Committee on Economic, Social and Cultural Rights (CESCR) has specified in its General Comment No. 12 that the right to food entails the adequacy and sustainability of food availability and access, i.e. that food has to be physically and economically accessible for all.[[134]](#footnote-134) According to CESCR, the State obligation is to take whatever steps necessary to ensure that the population is free from hunger and that everyone as soon as possible can enjoy an adequate right to food. For this the development of a national strategy on food security is necessary, and this strategy has to specifically address the need to prevent discrimination in access to food or resources for food, including guaranteeing full equal access for women to economic resources, “including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families.[[135]](#footnote-135)”

According to the Special Rapporteur on the right to food, closing the gender gap in agriculture is essential for achieving the Millennium Development Goal nr.1. For this purpose, the Special Rapporteur recommends measures such as “eliminating discriminatory laws and cultural practices; supporting the development of women’s cooperatives; employing more women in the extension services sector; titling schemes combined with broader agricultural support; issuing titles in the name of both the husband and wife; and encouraging more diverse farming practices such as diverse crop plantings and combining cash crops with subsistence crops”.[[136]](#footnote-136) The Special Rapporteur notes that women are a huge interest group and a major actor in realizing the right to food, but are rarely heard since women are under-represented legally, economically and politically. While women make up 80% of the world’s agricultural labour force, they own less than 1% of land and account for less than 1% of credit offered to farmers globally.[[137]](#footnote-137)

The UN General Assembly has recognized the right to clean water and sanitation as a human right, through its resolution 64/292 in 2010. The right to water and sanitation is intrinsically linked to the right to a decent standard of living (Article 11.1 ICESCR) and the right of everyone to the highest attainable physical and mental standard of health (Article 12.1 ICESCR)..[[138]](#footnote-138) Water is a pre-requisite for living a life in dignity, and the enjoyment of several other human rights depends on the accessibility of water. Article 14.2 of the CEDAW Convention stipulates that State parties should ensure women’s adequate living conditions, *inter alia* in relation to water supply. The CESCR underscores in its General Comment No. 15 on the right to water, that particular attention should be given by States to ensure marginalized farmers including women farmers access to water and water management systems. Water has to be available, of sufficiently good quality, and accessible both in economic terms as well as physically, without discrimination.[[139]](#footnote-139)

States have immediate obligations in relation to the right to water, including certain core obligations that represent a minimum level to which Covenant obligations have to be fulfilled by States at all times. Ensuring the right to access water and water facilities and services on a non-discriminatory basis, especially for marginalised or disadvantaged groups, is part of these core obligations.[[140]](#footnote-140) In relation to women’s right to water, CESCR specifies that States should take steps to ensure that women are not excluded from decision-making processes concerning water resources and entitlements, and that the disproportionate burden on women to collect water is alleviated.[[141]](#footnote-141)

The Special Rapporteur on the right to safe drinking water and sanitation has explained in her recent report on stigma and the realization of the human rights to water and sanitation, how the intersection of different attributes can compound the discrimination faced by certain groups or persons, such as being a woman and a sex worker, a woman infected with HIV/AIDS, or being a woman and belonging to a certain marginalized group. The stigma these groups of women face greatly affects their access to water supply and sanitation.[[142]](#footnote-142) Menstruating women suffer stigma, and menstruation remains taboo in many countries. Women often lack the appropriate facilities and the needed privacy to change or wash during menstruation, and cultural perceptions that menstruating women are “contaminated” or “impure” lead to the reduced mobility or even seclusion of women during menstruation, as well as to dietary restrictions and restricted access to water resources and food during menstruation. The taboos and deeply rooted practices surrounding menstruation also have a negative impact on girls’ right to education, since girls would be absent from school during menstruation, either because there are no appropriate facilities at school or because they are isolated during menstruation by their family due to cultural practices. To combat silence and stigma, States should make sure that there is sufficient access to information on menstruation and hygiene, including comprehensive sexual education in schools on menstruation, targeting both girls and boys. The provision of adequate hygiene facilities must be ensured as well.[[143]](#footnote-143)

*Right to decent work and to social security*

In addition to other rights, the right to work and to social security are closely linked to the right to an adequate standard of living and the continuous improvement of living conditions for oneself and one’s family. According to the International Labour Organization (ILO), women experience systemic barriers in almost every aspect of work, ranging from whether they have paid work at all, to the type of work they obtain or are excluded from, the availability of support such as childcare, the level of their pay, conditions of their work, their access to higher paying “male” occupations, the insecurity of their jobs, the absence of pension entitlements or benefits, and the lack of time, resources or information necessary to enforce their rights.[[144]](#footnote-144) Women make up the majority of the poor in both developed and developing nations, and they face multiple barriers to accessing social security as well, due to their roles as mothers, carers, informal workers, migrants, precarious and part-time workers.

The general right to work is stipulated by ICESCR Article 6. Article 7 further recognizes everyone’s right to enjoy just and favourable conditions of work, in particular the right to safe working conditions. Article 8 addresses collective rights related to the right to work, such as the right to form trade unions, and the right to join a trade union of choice. As the ESCR Committee explains in its General Comment No. 18, the work stipulated in Article 6 has to be decent work, i.e. respecting the fundamental rights of the individual as well as fundamental rights of the worker to safe working conditions and remuneration. According to the Committee, States should take measures to reduce to the extent possible the number of workers working outside the formal economy, which predominantly implicates women, and thus lacking any protection by the State as a result. Work must be available, accessible without discrimination on any grounds, and acceptable for the individual worker.[[145]](#footnote-145) Again, the State has an immediate obligation to guarantee that the right to work will be enjoyed without discrimination, and to take deliberate, concrete, targeted steps towards the realization of the right to work and full employment.[[146]](#footnote-146)

The Committee further underlines the need for “a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment in relation to men and women and their right to work by ensuring equal pay for work of equal value. In particular, pregnancies should not constitute an obstacle for employment, and should not constitute justification for loss of employment”.[[147]](#footnote-147)

The main ILO Conventions relevant for gender equality in the world of work include the Discrimination (Employment and Occupation) Convention from 1958, which stipulates that States are to declare and pursue proactively a national policy to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminate discrimination including discrimination based on sex. Other notable conventions are the Equal Remuneration Convention (1951), which addresses specifically the issue of equal remuneration for work of equal value, the Workers with Family Responsibilities Convention (1981) and the Maternity Protection Convention (2000). Numerous other ILO conventions are relevant from a gender perspective including conventions on employment promotion, working conditions, as well as specific categories, such as persons with HIV/AIDS, indigenous and tribal people, migrant workers, and domestic workers.[[148]](#footnote-148)

The right to social security including social insurance is provided for in Article 9 of ICESCR. According to the ECSR Committee, social security is of central importance for guaranteeing a life in dignity for all, when they are faced with circumstances that deprive them from the capacity of fully exercising their Covenant rights. The right to social security encompasses the right to access and maintain benefits without discrimination in order to secure protection from, *inter alia*, a lack of work-related income due to sickness, disability, maternity, employment injury, unemployment, old age or death of a family member, unaffordable access to health care or insufficient family support, particularly for children and adult dependents.[[149]](#footnote-149)

The right to social security has to be enjoyed equally between men and women (ICESCR Articles 2.2 on non-discrimination and 3 on equal enjoyment of ESCR rights). In its General Comment on the equal right of men and women to the enjoyment of all social, economic and cultural rights, the ESCR Committee notes that the implementation of Article 3 in conjunction with Article 9 requires e.g. the equalization of the compulsory retirement age for both men and women, ensuring that women receive equal benefits in both public and private pension schemes, and guaranteeing maternity leave for women, paternity leave for men and parental leave for both men and women. According to the Committee, States should take steps to eliminate factors that prevent women from contributing equally to social security schemes that link benefits with contributions. Differences in the average life expectancy of men and women need to be taken into account in the design of schemes, since they can lead to de facto discrimination, and non-contributory schemes also have to take into account that women more often than men live in poverty and often have the sole responsibility for the care of the children. Contributory pension schemes can accentuate gender inequalities, with older women more likely to receive lower pensions and other contributory benefits.[[150]](#footnote-150) The CEDAW General Comment on human rights of older women further discusses different discriminations older women face. Women are less present in the formal sectors of employment, and tend to be paid less for the same work or work of equal value. According to the Committee, such gender-based discriminations throughout a woman’s life has a cumulative effect in old age, leading to disproportionally low incomes and low pension or even no pension, compared to men.[[151]](#footnote-151)

## Violence against Women

The term “violence against women” refers to ***“****any act of gender-based violence that results in, or is likely to result in, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”*[[152]](#footnote-152)

Since the beginning of the 1990s, the issue of violence against women has gained much traction in human rights discourse compared to other human rights concerns of women. However, it took a long and persistent struggle by the women’s rights movement to persuade the international community to discuss violence against women as a human rights concern, recognizing that gender-based violence is a serious violation of human rights of global importance, which poses a threat to human development as well as international peace and security.[[153]](#footnote-153)

The agenda for the World Conference on Human Rights held in Vienna, 1993, did not originally mention women or any gender aspects of human rights. It was the women’s rights movement that brought attention to the issue of violence against women during the conference, leading *inter alia* to the recognition in the Vienna Declaration of the elimination of violence against women in public and private life as a human rights obligation.[[154]](#footnote-154) Subsequently, the UN General Assembly adopted a Declaration on the Elimination of Violence Against Women in December 1993. This was the first international instrument to specifically address the issue of violence against women. It recognizes that violence against women constitutes a violation of the rights and fundamental freedoms of women and a manifestation of historically unequal power relations between men and women. The Declaration calls on States to condemn violence against women and to works towards its eradication.The UN Commission on Human Rights appointed a Special Rapporteur on violence against women, its causes and consequences in 1994.[[155]](#footnote-155) The creation of this mandate has enabled a dynamic development of human rights standards in order to respond to contemporary challenges and emerging issues with respect to violence against women. The Special Rapporteur has through her research significantly developed concepts and legal frameworks pertaining to women’s human rights and violence against women.[[156]](#footnote-156) The 1995 UN World Conference on Women held in Beijing, China, reaffirmed the conclusions of the Vienna Conference, listing violence against women as one of the critical areas of concern.[[157]](#footnote-157)

The main convention on women’s rights, CEDAW, does not explicitly mention violence against women, but the CEDAW Committee in its General Recommendation No. 19 asserted that*violence against women is a form of discrimination, directed towards a woman because she is a woman or affects women disproportionately.* This violence seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.[[158]](#footnote-158) The adoption of General Recommendation No. 19 in 1992 was a critical precursor to the Vienna World Conference.

Women in all countries, irrespective of status, class, age, caste or religion, experience violence in virtually all spheres of life, whether in the home, at work, on the street, in government institutions, or in times of conflict or crisis. The violence is a continuum that exists across boundaries, both in peacetime and in conflict, committed by a range of actors in both private and public spaces. Violence is also present throughout the life-time of a woman, affecting girls and older women. Specific groups of women, suffering from various forms of discrimination, such as women with disabilities or migrant women, are particularly vulnerable to violence. Violence against women in its many forms can also be seen as a manifestation of historically unequal power relations between men and women.[[159]](#footnote-159)

Violence against women in the family sphere can take the form of domestic violence or harmful or degrading practices that are violent to and/or subordinate women.[[160]](#footnote-160) Country visits by the Special Rapporteur on Violence Against Women has shown that domestic violence remains a widespread problem, affecting women of all social strata. Harmful and degrading practices such as dowry related violence or so-called honour crimes also continue, without systematic monitoring or punishment, despite advances in terms of prohibiting legislation.[[161]](#footnote-161) Other examples of violence in the family are domestic assault (physical, psychological, emotional, financial or sexual violence), marital rape, femicide or gender-motivated killings (domestic murder, ritual killings or killings of women accused of practicing witchcraft, lynching, disappearance or extra-judicial killings, as well as gender identity and sexual orientation- related or ethnic or indigenous identity- related killings), forced pregnancy or abortion or sterilization, child marriage, female genital mutilation, sex-selective abortion and other discriminatory practices.[[162]](#footnote-162)

Other forms of violence against women occur in the community sphere. Examples of such violence can be rape/sexual assault, sexual harassment, violence within institutions, violence against women migrant workers, pornography, witchcraft or sorcery related violence or killings when women are accused of practicing witchcraft and are subjected to violence by the community as a result.[[163]](#footnote-163) Although in the majority of the cases younger women are at higher risk of witchcraft violence, in some parts of Africa older women are more vulnerable to sorcery-related femicide due to their economic dependence on others, or the property rights that they hold.[[164]](#footnote-164)

Violence against women is also perpetrated or condoned by the State.[[165]](#footnote-165) This type of violence can include gender-based violence during conflict, custodial violence, violence against refugees and internally displaced women, or women from indigenous or minority groups.[[166]](#footnote-166) As will be demonstrated below, State responsibility can also be invoked for private acts, i.e. when State officials are not direct perpetrators of violence.

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| CEDAW Committee, Cases *Goekce (deceased) vs. Austria* and *Yildirim (deceased) vs. Austria*  In the case *Sahide Goekce (deceased) vs. Austria* from 2005, the complainants claimed that the State had failed to guarantee the right to life and personal security of Ms. Goekce, who was killed by her husband after continued domestic violence, that had been reported to the police. The police had been aware of that her husband had a handgun, and had threatened to kill her on several occasions.  In another case from 2005 *Fatma Yildirim (deceased) vs. Austria*, the victim had also been killed by her husband after several death threats that had been reported to the police. The complainants claimed that the State had failed to take appropriate positive measures to protect the victim’s right to life and personal security.  In both cases the CEDAW Committee recommended that the State party strengthen implementation and monitoring of national laws on domestic violence, by “acting with due diligence to prevent such violence against women and adequately providing for sanctions when failing to do so.” The Committee found that there had been a violation of the rights of the deceased to life and physical and mental integrity under article 2(a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and general recommendation 19 of the Committee. It considered that given the combination of factors, the police knew or should have known that the victims were in serious danger, and therefore considered that the police were accountable for failing to exercise due diligence to protect the victims.[[167]](#footnote-167) |

The CEDAW Committee clarifies in its General Recommendation No. 19 that States may be held responsible for private acts of violence, if they ***“****fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation****.”***

This due diligence obligation of States is also repeated in the UN Declaration on the Elimination of Violence Against Women.[[168]](#footnote-168) The Special Rapporteur on Violence Against Women (SRVAW) has developed the use of a due diligence standard in terms of the State obligations to prevent, prosecute, punish and compensate for acts of violence against women.[[169]](#footnote-169) In her August 2011 report to the General Assembly, the SRVAW outlines evolving practices on the due diligence standard, jurisprudence and remaining challenges. According to SRVAW, the State’s due diligence obligation under International Human Rights Law consists of *preventing, investigating, punishing* acts of violence against women, *protecting*women from violence, and *providing an effective remedy and reparation* to victims of violence.[[170]](#footnote-170)

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| Inter-American Court of Human Rights, *Gonzalez et al. (Cotton Field) vs. México*  The case *Gonzalez et al. (Cotton Field) vs. México* (initial complaint in 2002 to the Inter-American Commission on Human Rights, decision by the Court in 2009), concerning the abduction, sexual violence and killing of two children and a woman by non-State actors, was one of hundreds of similar cases of disappearance, murder and rape of predominantly migrant women and girls that had occurred in Ciudad Huarez in México.  The Court considered for the first time the States’ affirmative obligations to respond to violence against women by private actors, it looked at the cases in the context of mass violence against women and structural discrimination, and found that gender-based violence can constitute gender discrimination. The Inter-American Court of Human Rights interpreted broadly the due diligence obligations of the State to prevent, investigate and impose penalties for violence against women. Using the concept of gender-sensitive reparations with a transformative approach- striving not only for restitution but correction, the Court declared that the reparations should be ‘oriented to identify and eliminate the structural factors of discrimination’ and in doing so should aim at transforming the underlying gender inequalities that gave rise to the violence. In addition, the Court ordered México to comply with a broad set of remedial measures including building a national memorial, conducting renewed investigations, and providing reparations of over $200,000 each to the families in the suit. [[171]](#footnote-171) |

The Special Rapporteur on Extrajudicial Executions has also addressed killings committed by private actors, such as murders by gangs, vigilante justice, “honour killings” or domestic violence killings. According to the mandate, an isolated private killing is a domestic crime and does not give rise to State responsibility. However, where there is a pattern of killings and the Government’s response (in terms either of prevention or of accountability) is inadequate, the responsibility of the State is engaged. Under human rights law, the State is not only prohibited from directly violating the right to life, but is also required to ensure the right to life, and must meet its due diligence obligations to take appropriate measures to deter, prevent, investigate, prosecute and punish perpetrators.[[172]](#footnote-172)

With regard to gender-related killings of women the SRVAW reported in 2012 that their prevalence is increasing and a lack of accountability for such crimes is the norm.[[173]](#footnote-173) The Rapporteur explained that these incidents are not isolated but represent the ultimate act of violence which is experienced in a continuum of violence by women living under conditions of gender-based discrimination. The Rapporteur added that a holistic approach in preventing gender-related killings must be emphasized in all the measures taken by States to investigate and sanction violence, in particular in designing, implementing and evaluating legislation and policies.

The Human Rights Committee in its General Comment No. 28 has underlined that all ICCPR rights should be ensured on a basis of equality between men and women,[[174]](#footnote-174) and in General Comment No. 20 that it is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against torture or cruel, inhuman or degrading treatment or punishment , whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.[[175]](#footnote-175) In addition, the Special Rapporteur on Torture and other Cruel, Inhumane and Degrading Treatment or Punishment argues for the torture protection framework to be applied in a gender-inclusive manner with a view to strengthening the protection of women from torture. According to the Special Rapporteur, State obligations under the Convention on the Prohibition of Torture clearly extend to the private sphere as well, in addition to violations committed by public officials.[[176]](#footnote-176)

The Committee Against Torture has also in its General Comment No. 2 further clarified that the requirement under the Convention on the Prohibition of Torture Article 1 of ***“****consent or acquiescence” by the State*, is equivalent to a due diligence obligation for the State to prevent, investigate, prosecute and punish torture by non-State officials or private actors consistently with the Convention. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.

The Special Rapporteur on Torture mentions rape and other forms of sexual violence such as threats of rape, touching, “virginity testing”, being stripped naked, invasive body searches, insults and humiliations of a sexual nature, as well as forced abortion and denial of access to safe abortion to women who have become pregnant as a result of rape, as forms of violence that could constitute gender-based torture. According to the Special Rapporteur, the powerlessness of the victim and the purpose of the act are the most relevant elements decisive for whether an act amounts to torture, or other cruel, inhumane or degrading treatment. The Special Rapporteur has further pointed out that given the particular vulnerability of women with disabilities, forced abortions and sterilizations of these women if they are the result of a lawful process by which decisions are made by their “legal guardians” against their will, may also constitute torture or ill-treatment. Violence in the name of honour, sexual violence and harassment, as well as slavery-like practices often of a sexual nature, domestic violence (in the form of intimate partner violence), female genital mutilation and human trafficking can also constitute gender-based torture, or other cruel, inhumane or degrading treatment according to the Special Rapporteur.[[177]](#footnote-177)

In general, both a broader understanding of violence against women and a more gender-sensitive interpretation of human rights law is developing, and globally, the awareness of the severity of the problem of violence against women has increased. Many countries have made significant progress in terms of adopting new legislation on violence against women, but implementation of the law in practice, proper training of law enforcement officials, as well as adequate and accessible protection, prevention and re-integration measures still remain a big challenge.[[178]](#footnote-178)

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| European Court of Human Rights, *Opuz vs. Turkey*  In the case *Opuz vs. Turkey*, the applicant alleged that the Turkish authorities failed to protect the right to life of themother of the claimant and that they were negligent in the face of the repeated violence, death threats and injury to which the claimant was subjected.  The Court found that there had been a *violation of Article 2 (right to life)* of the European Convention on Human Rights in respect of the applicant’s mother who was killed by the applicant’s ex-husband despite the fact that the domestic authorities had been repeatedly alerted about his violent behaviour;  · there had been a *violation of Article 3 (prohibition of torture and of inhuman and degrading treatment)* on account of the authorities’ failure to protect the applicant against her ex-husband’s violent and abusive behaviour; and,  · there had been a *violation of Article 14 (prohibition of discrimination)* read in conjunction with Articles 2 and 3 on account of the violence suffered by the applicant and her mother having been gender-based, which amounted to a form of discrimination against women, especially bearing in mind that, in cases of domestic violence in Turkey, the general passivity of the judicial system and impunity enjoyed by aggressors mainly affected women.[[179]](#footnote-179) |

*Vulnerability to trafficking related to discrimination and violence against women:*

Discrimination can be linked to trafficking in a number of ways. It is no coincidence that those most likely to be trafficked (irregular migrants, stateless persons, non-citizens and asylum seekers, members of minority groups) are especially susceptible to discrimination and intolerance, based on their race, ethnicity, religion and other distinguishing factors. In addition to increasing the risk of trafficking, discriminatory attitudes, perceptions and practices contribute to shaping and fueling the demand for trafficking.

Racial and gender-based discrimination in the denial of economic and social rights is also a critical factor in rendering certain persons more susceptible than others to trafficking. In both cases, the impact of discrimination results in fewer and poorer life choices. It is the lack of genuine choice that can in turn, render women and girls more vulnerable than men, particularly in certain sectors, and certain nationalities and races, more vulnerable to being trafficked – where they are minorities, or where they are living in conditions of poverty, or instability after conflict or political transition.

Importantly, while trafficking itself affects women and men alike, when it involves women, it becomes a form of violence against women. Violence directed against or primarily affecting women can also be a factor increasing vulnerability to trafficking. For example, women may accept dangerous migration arrangements in order to escape the consequences of entrenched gender discrimination including family violence and lack of security against such violence. Women may also be more vulnerable than men to coercion and force at the recruitment stage, increasing their susceptibility to being trafficked in the first place. States, particularly countries of origin, can address increases in vulnerability to trafficking-related to discrimination and violence against women through a range of practical measures that could include: provision of safe shelter for women experiencing violence including medical, psychological and legal facilities. Longer-term measures that seek to address the social, cultural and structural causes of violence are also important. These may include: reforming legislation that either discriminates against women or fails to address violence against women; ensuring the prompt investigation and prosecution of complaints related to violence against women; providing access to effective remedies for gender-based violence; and implementing education initiatives aimed at educating the public and relevant officials about violence against women.

According to the Palermo Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children, Article 3 ( a ), trafficking in persons means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.[[180]](#footnote-180)

The Special Rapporteur on Trafficking in Persons, mainly Women and Children, has reported on a number of issues related to the protection of victims of trafficking, and her work represents useful guidance for States on adopting a human rights based approach to trafficking.[[181]](#footnote-181) In addition, OHCHR has issued Recommended Principles and Guidelines on Human Rights and Human Trafficking, providing further guidance on the matter. The human rights of trafficked persons should be at the centre of all efforts by States to prevent and combat trafficking, and States have a due diligence obligation to investigate, prosecute and punish traffickers and provide assistance to trafficking victims.[[182]](#footnote-182)

*OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking*

1. Promotion and protection of human rights of victims of trafficking, migrants, asylum seekers, refugees, IDPs, should be at the centre of all anti-trafficking measures;
2. Identification of Traffickers and Trafficking victims is the responsibility of States, in order to ensure victims’ rights and to bring traffickers to justice;
3. Research, analysis, evaluation and dissemination- effective anti-trafficking measures have to be based on current and accurate information, experience and analysis;
4. Ensuring an adequate legal framework on trafficking at the national level, which implements and corresponds to international standards, including adequate protection for victims of trafficking and witnesses;
5. Ensuring and adequate law enforcement response- investigation and punishment of any law enforcement involvement in trafficking is paramount, sensitization training for law enforcement officials and training in investigation and prosecution of trafficking;
6. Ensuring protection and support for trafficked persons, without discrimination. Safe and adequate shelter, health and counselling services should be made available;
7. Preventing trafficking through strategies taking into account root causes including demand, and e.g. awareness raising campaigns, based on accurate information;
8. Special measures for child victims of trafficking are necessary due to their vulnerability and the physical, psychosocial, psychological harm suffered by trafficked children;
9. Ensuring access to remedies- trafficked persons have an international legal right to adequate remedies and reparation, and they should be given legal assistance to be able to exercise that right;
10. Obligations for peace keepers, civilian police, humanitarian and diplomatic personnel include ensuring that there is no involvement of such personnel in trafficking, and that any such involvement is thoroughly investigated and punished;
11. Cooperation and coordination between States and regions is crucial, since trafficking is a cross-border, global phenomenon that requires effective international, multilateral and bilateral cooperation to eradicate.

## E. Impact of Migration and Displacement on Women’s Rights

The principle of universality in international human rights law implies that States of origin, transit and destination are responsible for protecting the rights of migrants within their territories. Although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfil the human rights of all individuals under their jurisdiction, regardless of their nationality, origin, gender or age and regardless of their immigration status.[[183]](#footnote-183)

Every country is touched by the phenomenon of migration, either as countries of origin, transit or destination, or a combination of these. More than 200 million people now live outside their home countries, for reasons ranging from seeking better economic opportunities to escaping persecution. Female migrants form half of the world’s migrant population, and outnumber male migrants in developed countries.[[184]](#footnote-184) Migrants contribute greatly to the economy of their country of origin through remittances, and to their host country through their work while also bringing cultural and demographic diversity to that society.

Traditionally, immigration has been looked at mainly from an economic perspective, as a bi-product of globalization or a solution to unemployment and poverty. This has to some extent led to immigrants being treated as commodities instead of being treated as individuals with rights. A purely economic analysis of the phenomenon of immigration fails to take into account the human value of the individual immigrant, and inherent human right to live a life in dignity.[[185]](#footnote-185)

Female migration has both positive and negative repercussions. It has great potential and can advance gender equality through empowering migrant women, since many women nowadays migrate independently, and become the main income earners for their families. However, migration can also increase vulnerabilities, and in the case of migrant women, put them at risk of discrimination and violence.[[186]](#footnote-186) Women and children who migrate also become more vulnerable to other forms of exploitation, and those in an irregular situation are particularly vulnerable.[[187]](#footnote-187) Women migrants are often found in gender-segregated and unregulated sectors of the economy, such as domestic work, typically unprotected by local labour laws and organizations.[[188]](#footnote-188)

Irregular migrants often end up in administrative detention. The Special Rapporteur on the human rights of migrants noted in his report to the Human Rights Council in 2012 that migrant women who are detained may be vulnerable to sexual violence, which may be committed by male detainees or guards. The Special Rapporteur encouraged States to give particular attention to the situation of migrant women in detention. While women migrants who are travelling with their families and are detained should be kept together in accordance with the principle of family or unity, other women migrant detainees should be separated from men, and attended and supervised only by women officers, in order to protect them against sexual violence. The Special Rapporteur also recommended that pregnant women and breastfeeding mothers should not be detained.[[189]](#footnote-189)

An important milestone for the protection of the rights of migrants was the adoption by the General Assembly in 1990 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). This Convention reiterates the rights already contained in the major human rights treaties accorded to all persons, regardless of their migration status.

The ICRMW protects the rights of all migrant workers and their family members, both in regular and irregular situations, during the entire migration process. It covers all aspects of the life of migrants and their families, and entails obligations of States to promote sound, equitable, humane and legal conditions of migration. Under the Convention, States must take measures to ensure that the situation of migrants in an irregular situation does not persist (Article 69). The duty of States to provide information to migrants and their family members on their rights under the Convention (Article 33) is especially important for women migrants who often have limited access to reliable information regarding legal migration channels.[[190]](#footnote-190)

Subsequently, the rights of migrants have been addressed by international conferences such as the International Conference on Population and Development (ICPD) in Cairo 1994, which pointed out the need to address root causes of migration, especially those related to poverty, and the 2001 Durban Conference against Racism, Racial Discrimination Xenophobia and Related Intolerance, which stressed that policies on migration should not be based on racism, racial discrimination, xenophobia or related intolerance. The ICPD Programme of Action, the Beijing Declaration and Platform for Action (BDPA), and General Assembly Resolution 58/143 on Violence against Women Migrant Workers call for States to strengthen the protection of rights of migrant women, regardless of their immigration status.[[191]](#footnote-191) The Beijing Platform for Action calls on States to:

Ensure the full realization of the human rights of all women migrants, including women migrant workers, and their protection against violence and exploitation; introduce measures for the empowerment of documented women migrants, including women migrant workers; facilitate the productive employment of documented migrant women through greater recognition of their skills, foreign education and credentials, and facilitate their full integration into the labour force[[192]](#footnote-192)

The CEDAW Convention protects all women, including migrant women, against all forms of discrimination and requires States to ensure that all women can enjoy their human rights, de jure and de facto, on an equal basis with men in all fields. Women face a range of discriminatory restrictions or bans on female migration in their countries of origin, which leads many women to migrate through irregular or informal channels, leaving them outside the protection of the law and vulnerable to abuse by agents, smugglers and traffickers. Women often have limited access to reliable information and education, which can further exacerbate their vulnerability. In transit countries, women risk a number of different types of abuse, such as sexual and physical abuse by the escort or agent. Migrant women frequently end up in gender-insensitive work environments in the country of employment, where gendered notions of what type of work is appropriate for women limit women’s work opportunities to domestic work and certain forms of entertainment. In many destination countries, these fields of work are not regulated and thus the women are excluded from any protection of the law. Women migrants also may face multiple and intersecting forms of discrimination, such as xenophobia or racism, in addition to gender discrimination. Older migrant women may face additional challenges. Generally they have more difficulties to learn the local language, find an employment and access required health services. Older women staying in the country of origin are also particularly affected by migration, as very often they have to take care of the children left behind by migrant parents. Due to gender discrimination, women migrant workers often receive lower wages and suffer deplorable working conditions, and lack access to appropriate health services, including reproductive health services. Domestic workers in particular are vulnerable to physical, sexual and other types of abuse by their employers. Access to justice in countries of destination is also limited for many migrant women. Migrant women in an irregular situation are particularly vulnerable to abuse, isolatation, and limited access to health services or to the justice system.

The CEDAW Committee issued a specific General Comment on women migrant workers in 2008, addressing the discrimination and violence that some categories of women migrants face. The Recommendation concerns “women migrants who are in low-paid jobs, are at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship, unlike other professional migrant workers in the country of employment” and addresses violations of women’s human rights that occur both before departure in the country of origin, in the country of transit, and in the country of destination.[[193]](#footnote-193) According to the Committee, female migration and the impact of migration on women has to be understood through a gendered analysis, taking into account gender inequality, traditional roles of women, a gendered labour market, the global prevalence of gender-based violence, feminization of poverty and labour migration.[[194]](#footnote-194) The Committee recommends that States should take a number of measures aimed at e.g. enhancing the legal protection of female migrants and ensuring access to remedies and to services.[[195]](#footnote-195)

The former Special Rapporteur on the human rights of migrants highlighted in her 2004 report to the Commission on Human Rights on the human rights of migrant domestic workers, that a number of factors make migrant domestic workers a particularly vulnerable group. The Special Rapporteur had received several reports of abuse of domestic migrant workers, who are mainly female- they suffer discrimination, physical or sexual abuse by the host family and often related depression. In some cases the women work in slavery-like conditions, and the employer frequently take away their passports. They lack access to services or protection mechanisms, and do not report abuse for fear of being deported.[[196]](#footnote-196)

The Committee on the Protection of the Rights of All Migrant Workers and their families adopted their first General Comment in February 2011, on the rights of migrant domestic workers, in which it also identified several gaps in the protection of migrant domestic workers, including their legal protection, as many national laws exclude domestic work and workers, thereby contributing to exploitative labour practices and limiting legal venues of redress. In many countries, domestic workers are not recognized as ‘workers’ entitled to protection by labour laws. Strict immigration laws lead to many migrant domestic workers being in an irregular situation, outside the protection of the law, or dependent on the employer, since their immigrant status depends on the continued sponsorship of the employer. Contract law and social security laws also often do not apply to domestic workers. Even if some countries have legislation protecting domestic workers, protection gaps remain in practice- factors such as the nature of the work, language barriers, isolation and dependence contribute to this.[[197]](#footnote-197)

The Special Rapporteur on contemporary forms of slavery, including its causes and consequences has noted that combating domestic servitude and protecting domestic workers’ rights are two sides of the same coin. [[198]](#footnote-198) The Special Rapporteur has thus called on States to adopt specific provisions to criminalize servitude in all its forms and manifestations and punish perpetrators with due diligence as well as extend the equal protection of labour laws to domestic workers, including migrant domestic workers, and end any discriminatory denial of entitlements regarding working hours, rest days, vacation, health care, maternity leave and protection from unfair dismissal.[[199]](#footnote-199)

Women refugees and internally displaced women have specific protection needs, including due to increased vulnerability to sexual and gender-based violence. Factors such as displacement amplify discrimination against women and girls which is endured already in “normal conditions” or during peace time. Women and girl refugees or internally displaced are exposed to specific protection problems related to their gender, cultural and socio-economic position as well as their legal status. They have limited access to basic rights such as the rights to food, heath care, housing, documentation, and a nationality, compared to men and boys.[[200]](#footnote-200)

If a non-national has a claim for seeking asylum in the country of destination on the basis of fleeing from persecution in her or his own country, the 1951 Convention relating to the status of refugees as well as the principle of *non-refoulement* applies, which prevents State parties to the Convention from sending back a refugee to her or his home country where the refugee’s life or safety might be at risk, in addition to guaranteeing for the right to seek asylum among other rights.[[201]](#footnote-201) Women who have a well-founded fear of persecution for one or more of the Convention grounds (race, religion, nationality, membership of a particular social group or political opinion) in their home countries on gender based grounds can have legitimate claims for asylum, whether there is a risk for torture, female genital mutilation or other forms of gender based violence.

## F. Women’s Human Rights in Situations of Conflict and Crisis

*Sexual and Gender-Based Violence in conflict and post-conflict settings*

In situations of armed conflict or political strife, violence against women takes severe forms. During the past decade, much international attention has been paid to the relationship between gender-based violence and conflicts.[[202]](#footnote-202) Conflict has far-reaching effects on women’s enjoyment of their human rights, civil and political, as well as economic and social rights that need to be understood and addressed in a comprehensive manner.[[203]](#footnote-203)

Despite increased global efforts to combat gender-based violence in conflict and post-conflict settings, women continue to be subjected to gender-based violence such as rape, sexual slavery, kidnapping or trafficking, forced impregnation or miscarriages, and sexual abuse such as forced nudity, strip searches and other publicly humiliating and violating acts in conflict and post-conflict.[[204]](#footnote-204) Studies have shown that while men and boys are also victims of gender-based violence, women account for the vast majority of those affected.[[205]](#footnote-205) In 1992, the CEDAW Committee recognized in General Recommendation 19 that “wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures”. Both State and non-State actors commit this violence. With the intent to intimidate and humiliate the adversary, rape and sexual violence is also routinely used by all parties to conflicts as a weapon of war.[[206]](#footnote-206) Moreover, during conflict, domestic violence and sexual abuse also increases dramatically.[[207]](#footnote-207)

Violence against women during both during conflict and post-conflict can be seen as a continuum of the discrimination women experience in peace time. Conflict exacerbates pre-existing patterns of gender discrimination and put women and girls at heightened risk of sexual, physical and psychological violence.[[208]](#footnote-208) The underlying causes for violence both in peace and conflict are the same- historically unequal power relations between men and women, systemic or structural causes of violence such as gender-based discrimination and a patriarchal value system.[[209]](#footnote-209) In addition, conflict itself causes an acceptance of higher levels of violence, and in the post-conflict phase deeply rooted inequalities that existed before the conflict reassert themselves.[[210]](#footnote-210) Thus, the end of conflict does not translate into an end to the violence that women and girls endure. Women continue to suffer from the medical, physical, psychological and socioeconomic consequences of the violence suffered during conflict long after it has ended. The stigma associated with sexual violence is ever present, in conflicts and in their aftermath. Violence against women and girls also spikes in post-conflict societies, due to the general break down of the rule of law, the availability of small arms, the breakdown of social and family structures and the “normalization” of sexual violence as an additional element of pre-existing gender discrimination.[[211]](#footnote-211) Survivors of gender-based violence are left dealing with psychological trauma, re-integration difficulties, sexually transmitted diseases including HIV/AIDS, in combination with the denial of other rights that accompanies the post-conflict transition.[[212]](#footnote-212)

Until the 1990s, wartime sexual violence was not prosecuted as an international crime in practice, despite being prohibited already under early International Humanitarian Law (IHL).[[213]](#footnote-213) Sexual violence was viewed more as an attack against the honour of a woman or against morality than as a separate serious crime, e.g. the Fourth Geneva Convention Article 27 expresses the need for “special protection of women against attacks on their honour, in particular against rape, enforced prostitution or any form of indecent assault”.[[214]](#footnote-214) From the 1990s, international criminal jurisprudence has contributed enormously to clarifying the legal norms applicable to gender-based crimes during conflict- both the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR) have stated in different landmark decisions that war time rape and sexual violence can be considered as war crimes, crimes against humanity, acts of torture or constituent acts of genocide, as long as all the relevant elements of the crime are present.[[215]](#footnote-215)

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| ICTY: *Tadic*, 1997 conviction for crimes against humanity and war crimes committed during the war in the former Yugoslavia  Dusko Tadic, was a low-level officer working at the Omarska camp, was convicted for his *participation* in a widespread and systematic campaign of terror that included beatings, torture, sexual assaults, and other physical and psychological abuse directed at the non-Serb population in the Prijedor region.  Significantly, ICTY found the accused guilty of *crimes against humanity for criminal acts of persecution* that included crimes of sexual violence, meaning that the Court did not see sexual violence as a random and isolated act perpetrated during conflict but instead stated categorically that rape and sexual violence can be considered constituent elements of a widespread or systematic campaign of terror against a civilian population. It is not necessary to prove that rape itself was widespread or systematic but that rape was one of many types of crimes - that were committed on a widespread or systematic basis and comprised an aggressor’s campaign of terror.[[216]](#footnote-216)  ICTR: *Akayesu*, 1998 reconceptualization and broad definition of rape  ICTR made a significant contribution to the evolving jurisprudence of rape as a war crime by articulating a broad definition that squarely places rape on an equal footing with other crimes against humanity. The Akayesu definition reconceptualizes rape as an attack on an individual woman’s security of person, not on the abstract notion of virtue and not as a taint on an entire family’s or village’s honour. In addition, the court defined sexual violence to include forced nudity, firmly establishing that acts of sexual violence are not limited to those involving penetration or even sexual contact. According to the Court, “rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.” The Chamber defined rape as a “physical invasion of a sexual nature, committed on a person under circumstances that are coercive.”  The Akayesu decision also recognized for the first time, that acts of sexual violence can be prosecuted as constituent elements of a genocidal campaign. Jean-Paul Akayesu, the former major of Taba community in Rwanda, was convicted of genocide for knowing, instigating, aiding and abetting the rapes and sexual violence happening in the community, specifically targeting Tutsi women, as part of a genocidal campaign that intended to destroy the Tutsi group as a whole.[[217]](#footnote-217) |

The statute of the International Criminal Court (Rome Statute, 1998) builds on this jurisprudence defining a wide range of gender-based crimes as war crimes and crimes against humanity.[[218]](#footnote-218)

It also includes gender-sensitive provisions such as the establishment of a victim and witness protection unit within the Court, the provision of counselling and other necessary services to victims of gender-based violence, the appointment of legal advisers with gender expertise, of female judges and personnel, among other advances.

The adoption by the UN Security Council in the year 2000 of Resolution 1325 on Women, Peace and Security also represents a landmark advancement in terms of recognizing and addressing conflict related gender based violence. 1325 recognizes the devastating impact of conflict on women and girls, and calls on all States to implement fully existing international humanitarian and human rights law obligations protecting the rights of women and girls during conflict. It focuses on four main areas; prevention, participation, protection and relief and recovery.[[219]](#footnote-219) Among other actions, it urges States to take special measures to protect women and girls from gender-based violence during conflict, and ending impunity by prosecuting those responsible for crimes during conflict including gender-based crimes. Furthermore, 1325 calls for increased representation of women at all levels of decision making, in all mechanisms for the prevention, management and resolution of conflicts, and gender-mainstreaming in peacekeeping operations.[[220]](#footnote-220)

In a follow-up resolution adopted in 2008, Resolution 1820, the Security Council recognises sexual violence as a threat to international peace and security, often used as a weapon of war, stressing that sexual violence should be excluded from any amnesty provisions in a peace process and that equal access to justice should be ensured for victims of sexual violence. The subsequent follow-up resolutions have focused on preventing and responding to conflict-related sexual violence, and called for *inter alia*, the appointment of a Special Representative on Sexual Violence in Conflict, a Team of Experts and Women Protection Advisers to advice governments and peace keeping missions in dealing with sexual violence. Global indicators to track the implementation of resolution 1325 have been developed, as well as new monitoring and reporting mechanisms for conflict-related sexual violence.[[221]](#footnote-221)

*Women’s Participation in Peace Processes and Role as Agents of Change*

Despite the challenges the post-conflict vacuum poses for the enjoyment of women’s human rights, it can also be viewed as an opportunity for transformation – to change the societal structures and norms in place before the conflict, which contributed to violence against women in the first place. To make use of this opportunity to its fullest, it is imperative to take into account women’s various different roles and diverse experiences of conflict, not only as victims but as combatants, as part of organized civil society and as human rights defenders, as members of resistance movements, and as active agents in both formal and informal peace processes.[[222]](#footnote-222)

The adoption of Security Council Resolutions 1325 in 2000 and other subsequent resolutions and Secretary General reports on women, peace and security, and sexual violence in conflict recognize women’s role in peace building efforts. 1325 refers to the disproportionate and unique impact of armed conflict on women and girls, while at the same time acknowledging that women are not mere victims of conflict, but also active agents with an important role to play in conflict prevention, peacekeeping initiatives, conflict resolution and peace-building efforts.[[223]](#footnote-223) This was an important departure from references to women as victims or vulnerable groups. UNSCR 1889 adopted in October 2009, reiterates the key role of women in preventing conflict and in peace building, and urges the participation of women in all phases of the peace process, including in conflict resolution and post-conflict planning. Resolution 1889 emphasizes the development of strategies that address the needs of women and girls during post-conflict situations, including access to education, health services, and justice; and gender equality. The resolution also urges Member States to ensure gender mainstreaming in all aspects of post-conflict peace building and recovery.

Some positive effect of implementing UNSCR 1325 can already been seen on the ground. As of June 2012, 37 States had adopted national action plans on women, peace and securiy and a number of others were developing plans[[224]](#footnote-224) . Importantly, the CEDAW Committee has requested States to include compliance with Security Council resolutions on women, peace and security in their reporting to the Committee, adding to the monitoring of their implementation, since all areas of concern expressed in the resolutions reflect binding provisions of the CEDAW Convention.[[225]](#footnote-225)

Despite these advances and reforms already in place, considerable challenges with implementing these new standard-setting norms in practice remain. The Secretary General’s annual report from January 2012 on conflict-related sexual violence illustrates very well the challenges ahead. Gender-based violence in those settings remains rampant, and women’s access to justice, decision-making, and services remains limited.[[226]](#footnote-226) Previous SG reports have also underlined remaining challenges and obstacles to women’s meaningful participation in peace processes, and come up with comprehensive recommendations and action plans for UN agencies in cooperation with other stakeholders to be able to address these challenges more effectively.[[227]](#footnote-227) Recent civil society reports have also pointed out that women’s experiences of conflict and post-conflict continue to reveal exclusion, marginalization and limited decision making power.[[228]](#footnote-228) However, the global indicators set up by UNSCR 1899 as well as its request to the SG to ensure that relevant UN bodies, in cooperation with Member States and civil society, collect gender-disaggregated data were designed to promote a more effective implementation of 1325. In addition, UNSCR 1960 adopted in 2010 establishes a mechanism that allows the Secretary General to list parties “that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict.” Resolution 1960 also requests that parties to armed conflict make specific, time-bound commitments to combat sexual violence and the Secretary-General to track and monitor implementation of these commitments. Finally, the new resolution requests the Secretary General to establish monitoring, analysis and reporting arrangements (MARA) on conflict-related sexual violence. [[229]](#footnote-229)

These remaining challenges highlight the need for a comprehensive approach- the interrelatedness and interdependence of human rights requires that attention is paid to all human rights of women and girls in conflict and post-conflict, both civil and political rights, as well as social, economic and cultural rights. The same applies to transitional justice reforms- securing all human rights of women and girls is important for full post-conflict transformation. As an example, the fulfilment of rights such as economic and social rights is imperative for the eradication of gender-based violence, and for women to be able take on more active roles in peace building. Extreme poverty and unequal access to land, property, education and services have been mentioned as some of the reasons for women’s low participation in peace processes and in politics, and structural inequalities including socio-economic ones are often raised as root causes for gender-based violence. Thus, treaties such as the CEDAW and ICESCR have an important role to play in ensuring women’s rights both during conflict and post-conflict transitions.[[230]](#footnote-230)

*Women’s Economic, Social and Cultural Rights and Conflict*

Studies show that women still experience gross violations of economic, social and cultural rights during times of conflict. In the post-conflict phase, the challenges for women’s enjoyment of their ESC rights continue. Former women combatants may experience discrimination, since in some cases DDR programmes or other assistance to former combatants exclude women. Women who have been combatants also experience more difficulties re-integrating and getting back to civilian life compared to male ex-combatants, since they defied traditional gender roles by becoming combatants which is not easily accepted by their family and community. Discriminatory laws might be in place that prevent women and women-headed households from owning, inheriting, occupying or accessing land or other forms of property, or that prevent women’s access to credit or loans in the absence of a male guarantor. Other serious challenges are lack of appropriate institutional responses to gender-based violence, such as availability of adequate health care services, counselling, shelter homes, as well as inadequate access to education or employment opportunities.

Special attention should be paid to the judicial enforcement of economic, social and cultural rights in transitional contexts, especially women’s economic, social and cultural rights due to their increased vulnerability in conflict and post-conflict. Rule of law reforms such as review of key legislation and constitution writing, peace agreements, transitional justice mechanisms and reparations programmes or other post-conflict reform should take into account violations of women’s economic, social and cultural rights and civil, political rights equally, also because these rights are intrinsically linked. This will secure a comprehensive and lasting post-conflict transformation- an environment where women fully enjoy their fundamental rights.

Women’s particular vulnerability to social and economic deprivation is deepened in conflict and post-conflict situations, as conflict exacerbates gender-based discrimination and is accompanied by the loss of livelihoods and destruction of family and community structures.[[231]](#footnote-231) Women and children also comprise of the vast majority of the world’s refugees and persons internally displaced by conflict (IDPs) who are particularly exposed to gender-based violence and threats to their personal security but also to discrimination in terms of unequal access to food, water, housing, education, adequate medical care and sanitation.[[232]](#footnote-232) In addition, women’s right to adequate housing is particularly threatened during conflict, mass displacement or forced relocation when forced evictions tend to happen and affect women disproportionally.[[233]](#footnote-233)

During conflict women often become *de facto* heads of households, and thus responsible for everything including taking care of the children, their education, access to food, water and basic services, generating an income - a positive aspect of this is that these responsibilities provide women with an opportunity to make decisions regarding the running of the household and cultivation of lands, which they would not normally have.[[234]](#footnote-234) However, studies show a roll-back in women’s participation in public life and decision making post-conflict suggesting that women are often forced back into their traditional domestic roles. Women and women-headed households experience several obstacles in realizing their rights in transition.[[235]](#footnote-235)

The Committee on Economic, Social and Cultural Rights (CESCR) has underscored in its General Comments on the rights to water and to the highest attainable standard of health, that certain core obligations of the State are non-derogable and thus apply all situations including conflict, internal strife or emergencies. According to the Committee, States have the minimum core obligation to ensure safe access without discrimination at all times to the minimum essential amount of water. Other non-derogable, core obligations include ensuring, without any discrimination and especially for vulnerable or marginalized groups, access to health facilities, goods and services, to minimum essential food, basic shelter, housing and sanitation, to essential drugs, and reproductive, maternal (pre-natal as well as post-natal) and child health care.[[236]](#footnote-236) CESCR’s General Comment No. 18 on the right to work explains that access toemployment, especially for marginalized groups, as well as the obligation of avoiding any measure that results in discrimination or unequal treatment in the private and public sectors of disadvantaged individuals or groups, are core (non-derogable) obligations of the State.[[237]](#footnote-237)

Importantly, the CEDAW Convention also guarantees women’s access to health care and services (Article 12), training and education (Article 10), and employment opportunities (Article 11), and grants special protection to persons who have been displaced or rendered stateless or have become refugees or asylum seekers by entrenching women’s right to a nationality, movement and choice of domicile (Article 9 & 15(4)), at all times.[[238]](#footnote-238)

## G. Women’s Access to Justice

Ensuring women’s access to justice requires that women enjoy their right to equality before the law, that procedures are in place to guarantee non-discriminatory access to justice, and that women have effective access to remedies when their rights have been violated. These rights are provided for under international human rights law, including ICCPR article 2.3 (right to a remedy) and 26 (equality before the law). The right to an effective remedy is relevant for the realization of all other human rights, and is to be enjoyed on the basis of equality, without discrimination of any form such as discrimination on the basis of sex or gender. For the right to an effective remedy to be fulfilled, reparation has to be provided to the victim of a human rights violation.[[239]](#footnote-239) The CEDAW Convention Article 2 (c) requires State parties to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

Significant progress has been made globally with regard to revising laws that discriminate against women and drafting constitutions that incorporate guarantees of gender equality and non-discrimination. A legal and constitutional framework which guarantees women’s rights at the national level is fundamental for women to access justice. However, despite advances in terms of legislative reforms, discriminatory laws remain an issue in several countries and the implementation of laws even more so.[[240]](#footnote-240) Laws that are gender neutral on their face can have discriminatory effects in practice, and laws that guarantee gender equality or women’s rights may not be implemented in practice, which leaves the laws with little practical meaning for the advancement of women. In addition, violence against women or women’s work in the informal sector in many cases still remain outside legal protection. Extending the protection of the law to include e.g. sexual and gender-based violence, work in the informal sector and migrant women is essential.[[241]](#footnote-241) The obligation of States to ensure that laws are implemented in practice and have an actual impact on women’s lives is also important to emphasise.

Justice systems reflect power imbalances in the society including those that disadvantage women.[[242]](#footnote-242) Both social and institutional barriers inhibit women’s access to justice. Social barriers include of the lack of knowledge of their rights, illiteracy, lack of access to information and dependency on male relatives for assistance and resources. Institutional barriers such as geographical distance, suitable facilities, infrastructure and language have to be taken into account to ensure access to justice for rural, minority, or indigenous women or women with disabilities.[[243]](#footnote-243)

Women have to face indifference or gender biased attitudes and stereotyping by State authorities such as the police and the judiciary when it comes to investigating crimes committed against them.

*Stereotyping by the judiciary*

CEDAW Committee, *Vertido vs. the Philippines*, 16 July 2010.

The CEDAW Committee considered gender stereotypes in a case of rape, emphasizing “that stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.” According to the Committee, it was clear from the judgement that the assessment of the credibility of the author’s version of events was influenced by a number of stereotypes, the author in this situation not having followed what was expected from a rational and “ideal victim” or what the judge considered to be the rational and ideal response of a woman in a rape situation. In addition to ordering the State party to pay adequate compensation, the Court ordered the State to “ensure that all legal procedures in cases involving crimes of rape and other sexual offenses are impartial and fair, and not affected by prejudices or stereotypical gender notions.” To achieve this, a wide range of measures were ordered by the Court, targeted at the legal system, to improve the judicial handling of rape cases, as well as training and education to change discriminatory attitudes towards women.

The Special Rapporteur on the independence of judges and lawyers has expressed concern that women’s poverty and the entrenched economic inequality between men and women continues to seriously hamper women’s access to justice. The traditional denial of women’s autonomy to make decisions about their lives, women’s lack of access to education and information about rights, minimal participation in decision making and lack of access to property, land and equal work opportunities, are all factors contributing to the so called feminization of poverty, and consequently, to women’s lack of access to justice.[[244]](#footnote-244) An essential aspect of the State obligation to ensure the right to access to justice for women is to train judges and lawyers in women’s rights and gender sensitivity, to organise awareness raising campaigns or trainings to inform women and communities of their legal rights and to ensure that the provision of legal aid and the availability of effective protection mechanisms such as shelters and counselling services for victims are accessible to all women without discrimination. Ensuring adequate representation of women in the judiciary is also important. The Human Rights Committee has specified in its General Comment 28 on equality between men and women that States Parties should provide information on “whether measures are taken to ensure women equal access to legal aid, in particular in family matters.”[[245]](#footnote-245)

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| *Right to Legal Assistance*  European Court of Human Rights (ECHR), *Airey v. Ireland*, 9 October 1979.  In the case the claimant sought a judicially ordered separation from her physically abusive husband, as she was unable to conclude a separation agreement with her husband. However, she was unable to obtain such an order since she lacked the financial means, in the absence of legal aid, to retain a solicitor. The ECHR held that this was a violation of her right to access a court for the determination of her civil rights and obligations (Article 6). Citing international law and the Convention's intention the Court stated that remedies must be effective not illusory, noting that many civil and political rights had social and economic implications involving positive obligations. Accordingly, there is a right to legal assistance if legal assistance is indispensable for effective access to the courts.[[246]](#footnote-246) |

The CEDAW Committee has explained that “States parties must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate.”[[247]](#footnote-247) Furthermore, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law call for “proper assistance to victims seeking access to justice” including legal aid and ensuring adequate, effective and prompt remedies for victims of serious or gross violations.[[248]](#footnote-248) In addition, the due diligence obligation of States to prosecute, punish and compensate for human rights violations committed by non-State actor has also become a well-recognized international norm.[[249]](#footnote-249) States should ensure that women victims of human rights violations have access to immediate means of redress and reparation, ensuring the prosecution and punishment of the perpetrators and that mechanisms for this are accessible for women.[[250]](#footnote-250) The obligation to provide adequate reparations includes ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services for survivors of violence.[[251]](#footnote-251)

The Special Rapporteur on Violence Against Women puts forward her idea of “transformative reparations” in her report from 2010 on reparations for women subjected to violence. Given the disparate and differentiated impact violence has on women and different groups of women, there is a need for specific measures of redress to meet the specific needs and priorities of women victims. According to the SRVAW, the focus of reparations should be on fairness towards the victims of human rights violations and on “repairing” the damage done, not only on returning the women to the circumstances they were in before they suffered violence. Since the violence women experience is a continuum of structural and systemic discrimination women face both in peace time, during conflict and post-conflict, structural and systemic causes of the violence need to be addressed by reparations, aiming to transform these conditions. She outlines what reparations for violence suffered by women should entail including: restitution and compensation, rehabilitation and re-integration, symbolic recognition, guarantees of non-repetition- bearing in mind women’s specific needs and priorities, as well as a broad understanding of the harm and violence suffered by women both during conflict and after. Complex schemes of reparations, such as those providing a variety of types of benefits, can better address the needs of female beneficiaries in terms of transformative potential, both on a practical material level and in terms of their self-confidence and esteem. Meaningful participation of women themselves at all stages of developing a reparation programme is paramount. [[252]](#footnote-252)

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| *Due diligence obligations of the State*  Inter-American Commission of Human Rights (IACHR), *Jessica Lenahan (Gonzales) v. US*, 21 July 2011.  In 1999, J.L’s daughters were abducted by her former husband and killed after the police repeatedly refused to enforce her domestic violence restraining order against him. J.L. brought a constitutional claim against the police to the US Supreme Court which found that the police had no constitutional duty to enforce her restraining order, thereby leaving her without a remedy.  The Inter-American Commission reiterated the right of women victims of violence to access judicial protection. Finding that the investigations into the deaths of the three children were inadequate, the Commission also emphasized the victim’s right to access information and her right to truth. The Court underlined that investigations have to be serious, prompt, thorough, and impartial, and must be conducted in accordance with international standards in this area. Furthermore, the Commission addressed the meaning of the State obligation to act with due diligence to prevent, investigate, sanction and offer remedies for violations of women’s human rights by private actors, including the duty of the State to organize the structure of the State including the laws, public policy, and the judicial system so that it is capable of adequately and effectively preventing and responding to violations of women’s rights such as sexual and gender-based violence, including by effectively implementing restraining orders.[[253]](#footnote-253) |

All the social and institutional obstacles mentioned, as well as cultural and economic considerations, lead to the fact that violations of women’s human rights are often referred to alternative mechanisms for dispute resolution or dealt with through local mediation practices, instead of reaching the official justice system. In many countries, issues related to women have traditionally been given little importance and have always been resolved informally, by alternative or local mechanisms. In some countries, there are parallel legal orders that exist but that are not sanctioned by the State or formally recognized, whereas other countries have a state legal order which is plural, i.e. combining informal (e.g. traditional, religious or customary) and formal mechanisms of justice.[[254]](#footnote-254) This means that different legal orders coexist and overlap in some cases.

The Special Rapporteur on the independence of judges and lawyers has drawn attention to the problems of informal justice systems in relation to women’s rights to access to justice and to an effective remedy. For instance, she has highlighted cases of gender-based violence in which staff of the public prosecution service have pressured victims to drop their charges and resolve the situation through conciliation proceedings or mediation.[[255]](#footnote-255) The Special Rapporteur on Violence against Women (SRVAW) has also commented on informal justice mechanisms or alternative dispute mechanisms in her country mission reports. Her country visits have revealed that in many countries where the formal justice system exists in parallel with traditional or customary systems for dispute resolution, as well as with religious systems in some cases, and the formal justice system is weak and often inaccessible for women. In Somalia for instance, a complex interrelationship between customary, religious and formal dispute settlement exists. Clan interests often take pre-eminence over interests of individual victims, and families choose to reconcile through the customary system instead of seeking redress for victims. This leads to women victims of rape being forced to marry the rapist, following the ruling of male village elders applying customary practices.[[256]](#footnote-256) In Ghana, the former Special Rapporteur found traditional authorities, such as tribal chiefs in many rural areas, rule over issues and disputes regarding land and property rights, as well as ‘matters of natural interference’, including allegations of witchcraft, which have not yet been criminalized- women who are accused of practicing witchcraft are ostracised by their communities and displaced due to these allegations, often violently driven away, physically assaulted, or even murdered.[[257]](#footnote-257) In Afghanistan, sharia law, customary law, the formal secular legal system and international law exist in parallel. The Special Rapporteur found that Sharia law and tribal customs often get mixed up, and practices that would violate Islamic teachings are applied at local level such as child marriage, *bad*, denial of the rights of widows and inheritance rights of women. Local councils (Shuria or Jirga councils), composed of locally influential men, mediate cases including cases related to women’s rights and violence against women. Their decisions are binding and arguably “inherently discriminatory against women”.[[258]](#footnote-258)

It is the responsibility of States to ensure that, if informal systems or mechanisms of justice like reconciliation are used, these comply with international human rights standards. In practice however, research has shown that informal justice mechanisms often discriminate against women, and women are excluded from the decision making processes when their cases are being reconciled and decided upon. Areas crucial for women’s rights are often handled through reconciliation or by informal justice mechanisms such as marriage, divorce, access to land, property, and violence against women.[[259]](#footnote-259) Furthermore, research has demonstrated that in cases of intra-family violence, reconciliation is an inadvisable means of addressing crimes of domestic violence. The parties to the process do not have equal bargaining positions, and according to IACHR, in a number of countries it is clear that the agreements reached in the framework of mediation compound the physical and emotional risks for women. Generally, the assailant does not honour the agreement reached through reconciliation, and the agreement itself does not address the causes and consequences of the violence.[[260]](#footnote-260)

The Special Rapporteur on the independence of judges and lawyers recommended that international human rights law should be the starting point, taking traditional justice systems into account, but regarding them as having validity only insofar as their principles and practices conform to international standards.[[261]](#footnote-261)

Some good practices that have increased women’s access to justice in the field have been so called one stop shops that significantly reduce the steps a women has to take to access justice, by integrating services and offering all relevant services for women victims in one place, from health care and counselling to legal aid and collection of evidence, consequently reducing barriers and cost for accessing justice.[[262]](#footnote-262) Specialized and mobile courts are another successful example of how women’s access to justice can be effectively improved on the ground. These courts can bring justice closer to victims, especially women living in remote areas, to effectively address issues such as gender-based violence.[[263]](#footnote-263)

Increased representation of women within the police and the judicial system as well as mainstreaming gender within the judiciary are important factors for improving the responsiveness to gender issues, and for making it easier for women to seek assistance or report their cases, consequently improving women’s access to justice.

1. Johannes Morsink, Women’s Rights in the Universal Declaration, 13 Hum. Rts. Q. 229, 233-36 (1991) [↑](#footnote-ref-1)
2. All human rights treaties have bodies of experts which consider reports from States that have ratified the treaties concerning the implementation of such treaties. The work of these Committees is referred to throughout this Fact Sheet. For more information on the human rights treaty system, see OHCHR, Fact Sheet No. 30 on the United Nations Human Rights Treaty System (2012). [↑](#footnote-ref-2)
3. Other human rights instruments specifically dealing with women’s rights are addressed later in this Fact Sheet. [↑](#footnote-ref-3)
4. For more details about CEDAW and its Committee, please see OHCHR, Fact Sheet No.22, Discrimination against Women: The Convention and the Committee [↑](#footnote-ref-4)
5. CEDAW, article 1 [↑](#footnote-ref-5)
6. CERD, General Recommendation XXV (2000) [↑](#footnote-ref-6)
7. Regional human rights treaties also have corresponding oversight mechanisms to assess compliance with the provisions of the treaty by the States that have ratified them. These include the African Commission on Human and Peoples’ Rights, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights, the Council of Europe, and the European Court of Human Rights. Some of the work of these mechanisms is highlighted in this Fact Sheet. [↑](#footnote-ref-7)
8. OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986. [↑](#footnote-ref-8)
9. Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005. [↑](#footnote-ref-9)
10. <http://www.oas.org/juridico/english/treaties/a-61.html>, visited on 28 September 2012. [↑](#footnote-ref-10)
11. <http://www.echr.coe.int/ECHR/homepage_en>, visited on 3 September 2012. [↑](#footnote-ref-11)
12. <http://www.aseansec.org/22769.htm>, visited on 3 September 2012. [↑](#footnote-ref-12)
13. Part 1, para 18 Vienna Declaration [↑](#footnote-ref-13)
14. UNFPA, http://www.unfpa.org/webdav/site/global/shared/documents/publications/2009/chartbook.pdf [↑](#footnote-ref-14)
15. Chap I, annex II, strategic objective 1.2, para 232 [↑](#footnote-ref-15)
16. <http://www.cwgl.rutgers.edu/globalcenter/publications/holding.pdf> [↑](#footnote-ref-16)
17. GA Rest S-23/3, annex para 27 [↑](#footnote-ref-17)
18. E/2010/4-E/CN.6/2010/02, para 307 – 310 [↑](#footnote-ref-18)
19. General Assembly Resolution A/RES/66/288, GA 11 September 2012 ”The Future We Want”. [↑](#footnote-ref-19)
20. A/HRC/4/80, para 39. [↑](#footnote-ref-20)
21. A/HRC/10/59, paras 35-42, A/HRC/13/63 , paras 26-34; [↑](#footnote-ref-21)
22. See reports of Commissions of Inquiry for Libya and Syria, A/HRC/19/68, 8 March 2012, and A/HRC/19/69, 22 February 2012. [↑](#footnote-ref-22)
23. <http://www.fes-globalization.org/geneva/documents/Presentation_HRC%20Review_6-7Oct2011_McMahon%20notes.pdf>. [↑](#footnote-ref-23)
24. More information about special procedures mandates may be found at: http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx [↑](#footnote-ref-24)
25. See UNSC Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2010) and 1960 (2011) on women, peace and security This topic is dealt with extensively in chapter V. e. on women’s rights and conflict, and women’s participation in peace processes and role as agents of change. [↑](#footnote-ref-25)
26. Short History of the Commission on the Status of Women, at <http://www.un.org/womenwatch/daw/CSW60YRS/CSWbriefhistory.pdf>, consulted on 29 January 2013. [↑](#footnote-ref-26)
27. REILLY, Niamh: *Women’s Human Rights*, Polity Press, 2010, Chapter 2, p. 29-33. [↑](#footnote-ref-27)
28. BUNCH, Carlotte, and REILLY, Niam: *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women’s Human Rights*, Center for Women’s Global Leadership, 1994, Chapter 1, p. 3. [↑](#footnote-ref-28)
29. DAUER, Sheila: “Indivisible or Invisible, Women’s Human Rights in the Public and Private Sphere”, in *Women, Gender and Human Rights: A Global Perspective*, ed. AGOSìN, Marjorie, Rutgers University Press, 2001, p. 67-68. [↑](#footnote-ref-29)
30. Since the beginning of the 1990’s the CEDAW Committee, the Human Rights Committee among others have pronounced themselves on the matter. This as well as special procedures reports are further referred to and dealt with in Chapter V d. on violence against women. [↑](#footnote-ref-30)
31. CEDAW Committee General Comment No. 19, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>, visited on 14 May 2012. [↑](#footnote-ref-31)
32. HRC, General Comment No. 31 on the nature of State obligations under ICCPR, CCPR/C/21/Rev.1/Add. 13, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, p.3, visited on 14 May 2012. [↑](#footnote-ref-32)
33. ROMANY, Celina: “State Reasonability Goes Private: A Feminist Critique of the Public/Private distinction in International Human Rights Law”, in COOK, Rebecca J ed.: *Human Rights of Women, National and International Perspectives*, University of Pennsylvania Press, 1994, p.99. [↑](#footnote-ref-33)
34. Summary Paper on the Due Diligence Standard for Violence Against Women, by the SRVAW, and the International Human Rights Law Clinic at the University of Virginia School of Law, see: <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/VAW.aspx>, visited on 14 May 2012. [↑](#footnote-ref-34)
35. The SRVAW has developed the due diligence concept in several of her reports, that are further referred to and dealt with in Chapter V d. on violence against women. [↑](#footnote-ref-35)
36. See <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, visited on 14 May 2012. [↑](#footnote-ref-36)
37. E/CN.4/2002/83, 31 January 2002, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G02/104/28/PDF/G0210428.pdf?OpenElement>, visited on 14 May 2012. [↑](#footnote-ref-37)
38. See e.g., ROSS, Susan Deller: *Women’s Human Rights, The International and Comparative Law Casebook*, University of Pennsylvania Press, 2008, Chapter 12.1, p. 461. [↑](#footnote-ref-38)
39. See SRVAW’s report on the intersections between culture and violence against women, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, A/HRC/4/34, 17 January 2007, p. 4. [↑](#footnote-ref-39)
40. Report of the Special Rapporteur on cultural rights, A/67/287, para 16-17 [↑](#footnote-ref-40)
41. Ibid, para 22. [↑](#footnote-ref-41)
42. CEDAW Committee General Comment No. 19, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>, visited on 14 May 2012. [↑](#footnote-ref-42)
43. See report by the SRVAW Yakin Ertürk, A/HRC/4/34/ from 17 January 2007, on *Intersections between culture and violence against women*, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/103/04/PDF/G0710304.pdf?OpenElement>, p. 19-20, visited on 2 May 2012. [↑](#footnote-ref-43)
44. See *Ibid*. p . 25, and see OHCHR Fact Sheet on traditional pracitces harmful to the health of women and children, <http://www.ohchr.org/Documents/Publications/FactSheet23en.pdf>, p. 1-2, visited on 2 May 2012 and the CEDAW Committees General Comment No. 14 on female circumcision. [↑](#footnote-ref-44)
45. See Independent Expert report, 22 March 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/124/40/PDF/G1012440.pdf?OpenElement>, visited on 2 May 2012. [↑](#footnote-ref-45)
46. *Ibid*, p. 10-13. [↑](#footnote-ref-46)
47. Globally, laws that discriminate against women remain a significant problem, and even when there are laws in place that guarantee gender equality they are not yet being implemented in practice. See UN Women Report on the Progress of the World’s Women, 2011, *In the Pursuit of Justice*, <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>, and OHCHR Report on good practices aimed at preventing violence against women, <http://www2.ohchr.org/english/issues/women/docs/A-HRC-17-23.pdf>, visited on 15 May 2012. See also the newly established UN Working Group on Discrimination Against Women in Law and Practice: <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>. [↑](#footnote-ref-47)
48. See FARHA, Leilani: “Committee on the Elimination of discrimination Against Women”, in LANGFORD, Malcolm ed.: *Social Rights Jurisprudence, Emerging Fields in International and Comparative Law*”, Cambridge University Press, 2008, p. 560-561. [↑](#footnote-ref-48)
49. *Ibid.,* p. 562. [↑](#footnote-ref-49)
50. CEDAW Committee General Recommendation No. 25 on temporary special measures, <http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf>, p. 6-10 visited on 08 May 2012. The term “special measures” encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems. The choice of a particular “measure” will depend on the context in which article 4, paragraph 1, is applied and on the specific goal it aims to achieve.” (para 22). [↑](#footnote-ref-50)
51. MORGAN, Martha and FACIO, Alda: *Equity or Equality for Women? Understanding CEDAW’s Equality Principles*, International Women’s Rights Action Watch, 2009, IWRAW Occasional Paper Series No. 14m, p. 15-16. The authors point out that taking differences into account does not always lead to substantive equality- sometimes governments have used the perceived differences between men and women as motivation to enact legislation that treat them differently, for the purpose of “protecting” the women, for instance by prohibiting night work by female workers, which can lead to further inequality and discrimination against women. [↑](#footnote-ref-51)
52. See HRC General Comment No. 18: Non-discrimination : . 11/10/1989, <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument>, and General Comment No. 28: Equality of rights between men and women (article 3), 03/29/2000 and CESCR General Comment No. 20 on non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2 July 2009, and No. 16 on the equal right of men and women to enjoy economic, social and cultural rights, E/C.12/2005/4, 11 August 2005, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/435/39/PDF/G0543539.pdf?OpenElement>, visited on 09 May 2012. [↑](#footnote-ref-52)
53. In its General Comment No. 16 paras 12 and 13, the ESCR Committee defines direct and indirect discrimination as follows: ”Direct discrimination occurs when a difference in treatment relies directly and explicitly on distinctions based exclusively on sex or on characteristics of men and women which cannot be justified objectively. Indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory, but has a discriminatory effect when implemented. This can occur, for example, when women are disadvantaged compared to men in the enjoyment of a particular opportunity or benefit. This can occur, for example, due to pre-existing inequalities. A gender-neutral law may leave the existing inequality in place or exacerbate it”. [↑](#footnote-ref-53)
54. ICESCR, General Comment 16 [↑](#footnote-ref-54)
55. In development parlance, equity is a terminology commonly employed to speak about inequalities on a variety of grounds, not limited to inequalities based on sex. The use of the word equity has sometimes been understood as more accessible for a broader public and suggests a need for redistribution. However, some have suggested that the term should be used with caution to ensure it is not masking a reluctance to speak more openly about discrimination and inequality. See e.g., Report of JMP Working Group on Equity and Non-Discrimination, Special Rapporteur on the right to safe drinking water and sanitation, p. 4-5 [↑](#footnote-ref-55)
56. CEDAW/C/GC/28, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>, visited on 10 May 2012, p. 5. [↑](#footnote-ref-56)
57. UN High Commissioner for Human rights: *Building on Achievements, Women’s Human Rights Five Years after Beijing*, May 2000, chapter 1. A (3). [↑](#footnote-ref-57)
58. See OHCHR Gender Equality Policy, September 2011, Annex I Glossary, p. 13. [↑](#footnote-ref-58)
59. See also, OHCHR, Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law. [↑](#footnote-ref-59)
60. See OHCHR Durban Review Conference, 2009, on women facing multiple forms of discrimination: <http://www.un.org/durbanreview2009/pdf/InfoNote_07_Women_and_Discrimination_En.pdf>, visited on 18 May 2012; ILO report on *Multiple discrimination in the world of work*, <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/newsitem/wcms_170018.pdf>, visited on 16 May 2012. [↑](#footnote-ref-60)
61. Beijing Declaration and Platform for Action, 1995, Chapter IV para 46, <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, visited on 18 May 2012. [↑](#footnote-ref-61)
62. Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration: <http://www.un.org/durbanreview2009/pdf/DDPA_full_text.pdf>, visited on 18 May 2012. [↑](#footnote-ref-62)
63. General Comment No 25 CERD Committee, CERD/C/56/Misc.21/Rev.3, <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/76a293e49a88bd23802568bd00538d83?Opendocument>, visited on 04 June 2012. The Committee encourages States to provide it with disaggregated data according to both race or ethnicity, but also gender, to be able to better address the specific discriminations women are facing. [↑](#footnote-ref-63)
64. CEDAW Committee General Recommendation No. 25, para 12, <http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf>, visited on 21 May 2012. Note that most treaty bodies have now adopted general comments/recommendations where they refer to multiple or intersectional discrimination. [↑](#footnote-ref-64)
65. Art. 6(1) See <http://www2.ohchr.org/english/law/disabilities-convention.htm>, visited on 21 May 2012. [↑](#footnote-ref-65)
66. See the 15 years of the UN Special Rapporteur on Violence Against Women, its Causes and consequences- critical review report, <http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>, visited on 21 May 2012. [↑](#footnote-ref-66)
67. SRVAW report on multiple and intersecting forms of violence against women, A/HRC/17/26, 2 May 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/130/22/PDF/G1113022.pdf?OpenElement>, visited on 21 May 2012. In addition, both inter-personal and structural violence and discrimination is taken into account by the SRVAW. [↑](#footnote-ref-67)
68. CEDAW, General Recommendation No.21 (1994) [↑](#footnote-ref-68)
69. GASPARD, Françoise: “Unfinished Battles: Public and Political Life*”*,in SCHöPP-SCHILLING, Hanna Beate and FLINTERMAN, Cees eds.: *ThCircle of Empowerment, Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women*, the Feminist Press at the City University of New York, 2007, p. 145-153. [↑](#footnote-ref-69)
70. *Ibid.,* p. 148. Other conventions, declarations and international analyses place great importance on the participation of women in public life and have set a framework of international standards of equality. These include the International Covenant on Civil and Political Rights, the Vienna Declaration, the Beijing Declaration and Platform for Action, general recommendations 5 and 8 under the CEDAW Convention, general comment 25 adopted by the Human Rights Committee, the recommendation adopted by the Council of the European Union on balanced participation of women and men in the decision-making process and the European Commission's "How to Create a Gender Balance in Political Decision-making". [↑](#footnote-ref-70)
71. *Ibid*. [↑](#footnote-ref-71)
72. Beijing Declaration and Platform for Action, <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, paras 181-186 and para 190 (a) – (j)visited on 22 May 2012. [↑](#footnote-ref-72)
73. See <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, visited on 22 May 2012, section G. on women in power and decision making. Recommendations are directed to governments, political parties, women’s organizations, non-governmental organizations, the UN, national bodies, the private sector, trade unions, employers’ organizations, research and academic institutions, sub-regional and regional bodies and social partners, producers, and industrial and professional organizations. [↑](#footnote-ref-73)
74. UNDP report from 2000, *Women’s Political Participation and Good Governance: 21st Century Challenges*, <http://www.iknowpolitics.org/files/Women%20Political%20Participation%20-%2021%20century%20challenges.pdf>, p. 1-21, visited on 22 May 2012. [↑](#footnote-ref-74)
75. See <http://www.ipu.org/wmn-e/world.htm>, visited on 22 May 2012. [↑](#footnote-ref-75)
76. See <http://www.un.org/millenniumgoals/pdf/MDG_FS_3_EN.pdf>, fact sheet on goal three, visited on 22 May 2012: [↑](#footnote-ref-76)
77. CEDAW Committee General Recommendation No. 25, para 22 on Article 4 (1), temporary special measures, <http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf>, visited on 22 May 2012. [↑](#footnote-ref-77)
78. HOODFAR, Homa and TAJALI, Mona: *Electoral Policies: Making Quotas Work for Women*, Women Living under Muslim Laws, 2011, p. 42-49. [↑](#footnote-ref-78)
79. *Ibid.*, p. 43-45. [↑](#footnote-ref-79)
80. *Ibid.*, p. 50-57. [↑](#footnote-ref-80)
81. BARI, Farzana: *Women’s Political Participation: Issues and Challenges*, UN Division for the Advancement of Women (DAW), EGM/WPD-EE/2005/EP.12, 3 November 2005, p. 6. [↑](#footnote-ref-81)
82. *Ibid.*, p. 60-68. [↑](#footnote-ref-82)
83. ICCPR General Comment No. 25 on the right to participate in public affairs, voting rights and the right of equal access to public service, para. 5 defines the conduct of public affairs as the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (para.6). By exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association (para. 8). [↑](#footnote-ref-83)
84. CEDAW Committee General Recommendation No. 23 from 1997, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom23,visited> on 23 May 2012. [↑](#footnote-ref-84)
85. Special Rapporteur on the issue of human rights defenders, A/HRC/16/44, para 30 [↑](#footnote-ref-85)
86. See <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>, visited on 24 May 2012. [↑](#footnote-ref-86)
87. BARCIA, Inmaculada for Association for Women’s Rights in Development (AWID): *Urgent Responses for Women Human Rights Defenders at Risk, Preliminary Assessment*, June 2011, p. iii. [↑](#footnote-ref-87)
88. Special Rapporteur on Human Rights Defenders, annual report to the Human Rights Council in 2011 on: *Women human rights defenders and those working on women's rights or gender issues,* 20 October 2012, A/HRC/16/44, p. 6. Between 2004 and 2009, the Special Rapporteur sent an average of 350 communications to Governments per year, including allegation letters and urgent appeals whereof about one third of the communications concerned women defenders and those working on women’s rights or gender issues. [↑](#footnote-ref-88)
89. *Claiming Rights, Claiming Justice: A Guidebook on Women Human Rights Defenders*, Asia Pacific Forum on Women, Law and Development, 2007, p. 103-134, and BARCIA, Inmaculada and PENCHASZADEH, Analía: Ten Insights to Strengthen Responses for Women Human Rights Defender at Risk, AWID 2012, Women Human Rights Defenders International Coalition, <http://www.awid.org/Library/Ten-Insights-to-Strengthen-Responses-for-Women-Human-Rights-Defenders-at-Risk>, visited on 25 May 2012. [↑](#footnote-ref-89)
90. A/61/338, para. 17. [↑](#footnote-ref-90)
91. Beijing Declaration and Platform for Action (BDPFA), <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, visited on 30 May 2012. [↑](#footnote-ref-91)
92. GR 24, para 31(c), <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24>, visited on 30 May 2012. [↑](#footnote-ref-92)
93. CESCR General Comment No. 14 on the highest attainable standard of health, 2000, paras. 30, 43, 44 (a) and 47. [↑](#footnote-ref-93)
94. Cairo programme for action, Chapter 7, para 7.2. [↑](#footnote-ref-94)
95. E/CN.4/2004/49, para 53. [↑](#footnote-ref-95)
96. Cairo programme for action, Chapter 7, para 7.2, <http://www.iisd.ca/Cairo/program/p00000.html>, visited on 30 May 2012. [↑](#footnote-ref-96)
97. CEDAW General Recommendation 21, para. 22, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>, visited on 30 May 2012. [↑](#footnote-ref-97)
98. *Pichon v. France* (European Court of Human Rights), application 49853/99, decision by the Court 07/06/1999 on the inadmissibility of the complaint- the applicants’ conviction by French courts for their refusal to sell contraceptive pills did not interfere with the exercise of their rights (right to freedom of religion) guaranteed by Article 9 of the European Convention on Human Rights, so the Court found that the application was manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. [↑](#footnote-ref-98)
99. CRC General Comment 4, para 28, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/427/24/PDF/G0342724.pdf?OpenElement>, visited on 30 May 2012. [↑](#footnote-ref-99)
100. *Ibid*., (para 11) and (para 14). [↑](#footnote-ref-100)
101. *Ibid.*  [↑](#footnote-ref-101)
102. See WHO briefing note on Achieving Millennium Development Goal 5, <http://whqlibdoc.who.int/hq/2009/WHO_RHR_09.06_eng.pdf>, visited on 31 May 2012. The Millennium Development Goal No. 5 is to improve maternal health, with target 5.A: to reduce by three quarters, between 1990 and 2015, the maternal mortality ratio, and target 5.B: to achieve, by 2015, universal access to reproductive health. [↑](#footnote-ref-102)
103. See CEDAW Committee C/49/D/17/2008, 10 August 2011 CEDAW forty-ninth session. [↑](#footnote-ref-103)
104. See e.g. the HRC, General Recommendation No. 28, para 11, <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument>, visited on 30 May 2012, and HRC concluding observations from 2012 on Guatemala (CCPR/C/GTM/CO/3, para 20) and Dominican Republic (CCPR/C/GTM/CO/3). [↑](#footnote-ref-104)
105. CEDAW Committee General Recommendation No. 24 on women and health (para 31(c)). [↑](#footnote-ref-105)
106. Beijing Declaration and Platform for Action, <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>, para. 106 (k). The Special Rapporteur on the right to health presented a report in 2011 to the General Assembly on criminalization and other legal restrictions on reproductive health services, including abortion. He concluded that “States must take measures to ensure that legal and safe abortion services are available, accessible, and of good quality,” calling on States to “decriminalize abortion” and “to consider, as an interim measure, the formulation of policies and protocols by responsible authorities imposing a moratorium on the application of criminal laws concerning abortion.” In addition, post abortion medical services, regardless of the legality of abortion, must always be available, safe and accessible. [↑](#footnote-ref-106)
107. LMR v Argentina, UN Doc. CCPR/C/101/D/1608/2007 (28 April 2011). [↑](#footnote-ref-107)
108. Karen Noelia Llantoy Huamán v. Peru, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005), Communication No. 1153/2003 : Peru. 22/11/2005. [↑](#footnote-ref-108)
109. CEDAW C/50/D/22/2009, <http://www2.ohchr.org/english/law/docs/CEDAW-C-50-D-22-2009_en.pdf>, visited on 30 May 2012. [↑](#footnote-ref-109)
110. CEDAW Committee comments on State party reports, see Indonesia, 16, U.N. Doc. CEDAW/C/IDN/CO/5 (2007) and Turkey, 196, U.N. Doc. A/52/38/Rev. 1 (1997). CRC has commented that parental consent for abortion has increased the number of illegal abortions among adolescents, see Kyrgystan, 45, U.N. Doc. CRC/C/15/Add. 127 (2000), and has in several cases recommended States to provide adolescents with youth-friendly rehabilitation and counselling services [↑](#footnote-ref-110)
111. HRC General Comment 28, para 20, <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument>, visited on 30 May 2012. [↑](#footnote-ref-111)
112. CEDAW Committee General Recommendations No. 19 para. 22. [↑](#footnote-ref-112)
113. CEDAW Committee A.S v. Hungary,CEDAW/C/36/D/4/2004, <http://www2.ohchr.org/english/law/docs/Case4_2004.pdf>, visited on 31 May 2012. [↑](#footnote-ref-113)
114. UN Committee on the Rights of Persons with Disabilities (CRPD Committee), Concluding Observations: Tunisia, para. 29, U.N. Doc. CRPD/C/TUN/CO/1 (2011). See also: A/HRC/20/5, OHCHR Thematic study on the issue of violence against women and girls and disability, 2012; <http://www.hrw.org/sites/default/files/related_material/2011_global_DR.pdf>, visited on 31 May 2012. [↑](#footnote-ref-114)
115. A/61/338, para. 9 [↑](#footnote-ref-115)
116. To facilitate the identification of maternal deaths in circumstances in which cause of death attribution is inadequate, a new category has been introduced: Pregnancy-related death is defined as the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the cause of death. [↑](#footnote-ref-116)
117. OHCHR Report on Preventable Maternal Mortality and Morbidity and Human Rights, A/HRC/14/39, p. 4. [↑](#footnote-ref-117)
118. *Ibid*., p. 7. [↑](#footnote-ref-118)
119. OHCHR Report on Preventable Maternal Mortality and Morbidity and Human Rights, A/HRC/14/39, p. 8-17. An inter-sectional approach to gender discrimination is required since women are discriminated against due to multiple grounds (see the Concepts chapter on Intersectionality). [↑](#footnote-ref-119)
120. See *Ibid*. For further information on applying a human rights based approach to maternal mortality, see OHCHRs report on practices in adopting a human rights based approach to maternal mortality and human rights, A/HRC/18/27, 8 July 2011 and OHCHR Technical Guidance report (Concise technical guidance on the application of a human rights based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality, A/HRC/21/22). [↑](#footnote-ref-120)
121. *Women’s Rights to Land, Housing and Property in Post-Conflict Situations and during Reconstruction*, UN Habitat, United Nations Center for Human Settlements Land management series No. 9, 1999, p. 6. [↑](#footnote-ref-121)
122. *Ibid*. [↑](#footnote-ref-122)
123. *Ibid*., p. 8-9. Women represent according to estimates up to 70 % of the world’s poor. In rural areas, women are often responsible for food production, yet they rarely have rights to the land they cultivate. For every 200 landowners worldwide, only 20 are women- see FAO, [www.fao.org/docrep./012/a1059e/al059e00.pdf](http://www.fao.org/docrep./012/a1059e/al059e00.pdf), visited on 15 March 2012. [↑](#footnote-ref-123)
124. OHCHR: *Women and the Right to Adequate Housing*, UN 2012, HR/PUB/11/02. See also:  ***Handbook on Effective Strategies to Realize Women’s Rights to Land and Other Productive Resources***, UN Women and OHCHR 2013 (TBC). [↑](#footnote-ref-124)
125. OHCHR: *Women and the Right to Adequate Housing*, UN 2012, HR/PUB/11/02, p. 30-31. Traditional leaders and local authorities are the main enforcers of customary practices with regard to land, property and housing. [↑](#footnote-ref-125)
126. *Ibid*., 34. [↑](#footnote-ref-126)
127. Para 165 (e). [↑](#footnote-ref-127)
128. See <http://ww2.unhabitat.org/declarations/habitat_agenda.asp>, visited on 13 June 2012. The Habitat Agenda commits States to providing legal security of tenure and equal access to land to all people, including women and those living in poverty, and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies (para. 40 (b)). States are also called upon to support community projects, policies and programmes that aim to remove all barriers to women’s access to affordable housing, land and property ownership, economic resources, infrastructure and social services, and ensure the full participation of women in all decision-making (para. 78 (e)). Furthermore, States are requested to promote mechanisms for the protection of women who risk losing their homes when their husbands die (para. 78 (g)). See OHCHR: *Women and the Right to Adequate Housing*, UN 2012, HR/PUB/11/02. [↑](#footnote-ref-128)
129. GòMES, Maria: *Good Practices in Realizing Women’s Rights to Productive Resources, with a Focus on Land*, Background paper prepared for UN Women and OHCHR Expert Meeting, Geneva, Switzerland, 25 to 27 June 2012, p. 5, citing definition provided by FAO in *Gender and Access to Land*, Land Tenure Studies, No. 4, 2002. [↑](#footnote-ref-129)
130. CESCR, General comment No. 4 on the right to adequate housing, paras. 7 and 8, <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument>, visited on 07 June 2012. [↑](#footnote-ref-130)
131. CEDAW Committee General Recommendation No. 21 from 1994, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>, visited on 07 June, 2012. According to the Committee, under the CEDAW Convention women should be accorded a legal capacity identical to that of men, so that a woman can enter into contracts, own property and have access to financial credit, without a husband’s or male family members guarantee or concurrence. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and is also in many countries critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her children. With regard to marital property, even if the law gives women the right to own an equal share of property during marriage or when the marriage ends, in practice there are many obstacles such as discriminatory laws or customs hindering women’s exercise of those rights which should be addressed by States. The same applies for inheritance laws and practice, and the CEDAW Committee urges States to abolish legal provisions on inheritance that do not reflect the principles of equal ownership of property acquired during marriage. See also FARHA, Leilani, “Women and Housing”, in ASKIN, Kelly and KOENIG, Dorean M. eds., *Women and International Human Rights Law*, volume 1, Transnational Publishers Inc., 1999, p. 510-513. [↑](#footnote-ref-131)
132. RAE Isabella, *Women and the Right to Food, International Law and State practice*, FAO publication 2008, p. 8. [↑](#footnote-ref-132)
133. See reports and statements of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>, visited on 27 September 2012. [↑](#footnote-ref-133)
134. CESCR, General Comment No. 12 on the right to food, E/C.12/1999/5, 12 May 1999, paras. 1, 6-13. [↑](#footnote-ref-134)
135. CESCR, General Comment No. 12 on the right to food, E/C.12/1999/5, 12 May 1999, paras. 14-18, 21, 26. [↑](#footnote-ref-135)
136. http://www.srfood.org/index.php/en/areas-of-work/food-production-and-resources/gender [↑](#footnote-ref-136)
137. See the website of Olivier de Schutter, Special Rapporteur on the Right to Food, <http://www.srfood.org/index.php/en/areas-of-work/food-production-and-resources/gender>. See also FAO gender resources website: <http://www.fao.org/gender/gender-home/gender-resources/en/>, visited on 5 September 2012. [↑](#footnote-ref-137)
138. See CESCR, General Comment No. 15, E./C.12/2000/11, 20 January, 2003 [↑](#footnote-ref-138)
139. *Ibid*, paras. 7 and 10-12. [↑](#footnote-ref-139)
140. *Ibid*., paras. 30-38. [↑](#footnote-ref-140)
141. *Ibid*., para 16 (a). See also: <http://www.unicef.org/wash/index_womenandgirls.html>, visited on 5 September 2012. [↑](#footnote-ref-141)
142. The Special Rapporteur on the human right to safe drinking water and sanitation explains what stigma is and how it manifests itself, and its effects in her report: A/HRC/21/42, 2 July 2012, paras 12-42. [↑](#footnote-ref-142)
143. *Ibid*., paras 25, 62, 69, 74. [↑](#footnote-ref-143)
144. See <http://www.ilo.org/public/english/support/lib/resource/subject/gender.htm>, visited on 27 September 2012. [↑](#footnote-ref-144)
145. CESCR General Comment No. 18, E/C.12/GC/18, 6 February 2006, paras 2-12. [↑](#footnote-ref-145)
146. *Ibid*., para 19. [↑](#footnote-ref-146)
147. *Ibid*., para 13. [↑](#footnote-ref-147)
148. Gender Equality and Decent Work: selected ILO Conventions and Recommendations that promote gender equality as of 2012, <http://labordoc.ilo.org/search?ln=en&as=1&m1=p&p1=gender+equality&f1=subject&op1=a&action_search=Search&m2=a&p2=&f2=&op2=a&m3=a&p3=&f3=&year=&year1=&year2=&location=&rm=yt&rg=25&sc=1&of=hb>, visited on 10 September 2012. [↑](#footnote-ref-148)
149. CESCR General Comment No. 19, E/C.12/GC/19, 4 February 2008, para 1 and 2. [↑](#footnote-ref-149)
150. *Ibid*., para 32. See also ECOSOC E/2012/51 on the human rights situation of folder persons, para 51. [↑](#footnote-ref-150)
151. CEDAW Committee General Comment No. 27, CEDAW/C/GC/27, 16 December 2010, para 20. [↑](#footnote-ref-151)
152. Declaration on the Elimination of Violence Against Women, General Assembly Resolution 48/104 of 20 December, 1993, Article 1. The Beijing Fourth World Conference on Women adopted the same language in its Platform for Action in September, 1995. The declaration attributes root causes to gender violence to historically unequal power relations between women and men, and condemns all traditional practices or customs that are harmful to women. The term “Gender-based violence” emphasizes the gender-dimension of violent acts, referring to the relationship between the status of women in society and their vulnerability to violence (see IASC Guidelines for Gender-Based Violence Interventions in Humanitarian Settings, Chapter II). Men, boys and persons belonging to sexual minorities can also be victims of gender-based violence; GBV is a gender-neutral term as opposed to violence against women. [↑](#footnote-ref-152)
153. See UN Women: *Progress of the World’s Women, In Pursuit of Justice*, 2011-2012, p. 8, WHO: *Addressing Violence Against Women and Achieving the Millennium Development Goals*, <http://www.who.int/gender/documents/MDGs&VAWSept05.pdf>, p. 4. [↑](#footnote-ref-153)
154. BUNCH, Carlotte, and REILLY, Niam: *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women’s Human Rights*, Center for Women’s Global Leadership, 1994, Chapter 1, p. 1-3, 8. The issues raised in Vienna by the Global Campaign, a coalition of women’s rights organizations, stemmed from concerns put forward by the women’s rights movement that had emerged the past decade, with its roots in global women’s rights movements during the UN Decade of Women (1976-85), challenging the traditional approach to human rights purporting that human rights would be limited to violations committed by State agents, in the public sphere, and against (mostly male) dissidents or political opponents, as well as the predominance of civil and political rights over other human rights. Through organizing the Global Tribunal on Women’s Human Rights during the Vienna Conference, with women from all over the world speaking out about their experiences of violence, the Global Campaign managed to draw the attention of the international community to the seriousness of occurring violations of women’s human rights. As a result, the Vienna Declaration and Programme of Action contained an extensive section on women’s human rights and declared that “the human rights of women and the girl-child are an in-alienable, integral and indivisible part of universal human rights”. [↑](#footnote-ref-154)
155. This happened on the recommendations both of the Global Campaign for Women’s Human Rights and the Commission on the Status of Women (CSW), see: DAUER, Sheila: “Indivisible or Invisible, Women’s Human Rights in the Public and Private Sphere”, in in *Women, Gender and Human Rights: A Global Perspective*, ed. AGOSìN, Marjorie, Rutgers University Press, 2001, p. 68-69, and ENGLE MERRY, Sally: “Women, Violence and the Human Rights System, in *Ibid*. p. 88. [↑](#footnote-ref-155)
156. See the 15 years of the UN Special Rapporteur on Violence Against Women, its Causes and consequences- critical review report, <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>, p. 10 and 24-28, visited on 24 August, 2012. [↑](#footnote-ref-156)
157. FRASER, Arvonne: “Becoming Human”, in *Women, Gender and Human Rights: A Global Perspective*, ed. AGOSìN, Marjorie, Rutgers University Press, 2001, p. 57. See also Beijing conference documents and its follow up, Beijing +5, +10 and +15 by the CSW <http://www.un.org/womenwatch/daw/beijing/>, visited on 22nd January, 2012, and ENGLE MERRY, Sally: *Human Rights and Gender Violence, Translating International Law into Local Justice*, University of Chicago Press, 2006, p. 21. In the earlier global 1975 and 1980 world conferences on women, gender violence was not treated as a major issue, and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women does not mention violence against women. [↑](#footnote-ref-157)
158. See CEDAW Committee General Comment No. 19, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>, visited on 24.01.2012, paras 1, 6, 7. In para 24 (a) the Committee states that: “States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.” [↑](#footnote-ref-158)
159. Report of the Secretary General, *In-depth Study on All Forms of Violence against Women*, A/61/122/Add. 1, 6 July 2006, p. 27. The central premise of the analysis of violence against women within the human rights framework is that the specific causes of such violence and the factors that increase the risk of its occurrence are grounded in the broader context of systemic gender-based discrimination against women and other forms of subordination. Vulnerability to violence is understood as a condition created by the absence or denial of rights. [↑](#footnote-ref-159)
160. Declaration on the Elimination of Violence Against Women, article 2(a) [↑](#footnote-ref-160)
161. Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, to the General Assembly: *Advancement of Women*, A/66/215, 1 August 2011, section B, p. 9-11. The SR found links between poverty, exclusion and violence, as well as rising unemployment, re-surfacing of patriarchal traditions and of religious conservatism, and violence against women. [↑](#footnote-ref-161)
162. COOMARASWAMY, Raadhika and KOIS, Lisa M.: “Violence Against Women”, eds. ASKIN, Kelly D. and KOENIG, Dorean M.: *Women and International Human Rights Law*, Transnational Publishers, Inc., 1999, p. 184-186. See also SRVAW report on gender related killings of women: A/HRC/20/16, para. 16, 23 May 2012, <http://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf>, visited on 24 August 2012. [↑](#footnote-ref-162)
163. Declaration on the Elimination of Violence Against Women, article 2(b); Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, to the General Assembly: *Advancement of Women*, A/66/215, 1 August 2011, section B, p. 12-13, and SR on Extrajudicial, Summary or Arbitrary Executions: A/HRC/11/2, paras. 43-59. [↑](#footnote-ref-163)
164. A/HRC/20/16, Report of the SRVAW on gender-related killings of women, May 2012. [↑](#footnote-ref-164)
165. Declaration on the Elimination of Violence Against Women, article 2(c) [↑](#footnote-ref-165)
166. Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, to the General Assembly: *Advancement of Women*, A/66/215, 1 August 2011, section B, p. 14. The SR talks about VAW being committed in four spheres; in the family, in the community, condoned or perpetrated by the State, or in the transnational arena. [↑](#footnote-ref-166)
167. See <http://www.equalrightstrust.org/ertdocumentbank/ahide%20Goekce%20_deceased_%20v.%20Austria.pdf>, and <http://www.equalrightstrust.org/ertdocumentbank/Fatma%20Yildirim%20_deceased_%20v%20Austria.pdf> visited on 23.01.2012. The CEDAW Committee read Articles 1-3 and 5 of the CEDAW Convention in conjunction with the Committee’s General Comment No. 19, coming to the conclusion that there had been a breach of the mentioned articles in both the Goekce and the Yildirim cases. [↑](#footnote-ref-167)
168. See CEDAW Committee General Comment No. 19, para 9, and UN General Assembly Resolution A/RES/48/104, 20 December 1993, Article 4 (c), requesting States to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.” [↑](#footnote-ref-168)
169. Special Rapporteur on Violence Against Women: *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, 35, U.N. Doc. E/CN.4/2006/61, 2006. In various areas of law, the due diligence standard is used as a ‘measuring stick’ to assess whether s State is meeting its obligations. For human rights law obligations, the standard serves as a tool for rights-holders to hold duty-bearers accountable by providing an assessment framework for ascertaining what constitutes *effective fulfilment* of the obligation, and for analyzing the actions or omissions of the duty-bearer. This is especially important where the potential infringement comes through a duty-bearer’s *failure to act,* as it can be difficult for rights-bearers to assess if an omission constituted a violation of their right without some normative basis for the appraisal. [↑](#footnote-ref-169)
170. Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, to the General Assembly: *Advancement of Women*, A/66/215, 1 August 2011, section C, p. 16-22 and section D. According to the report, serious challenges remain in all areas of State obligations, in particular with regard to prevention; punishing gender violence in a non-discriminatory way; protection and action/competence of the police, as well as gender sensitive reparations. She requests States to adopt a holistic framework for the prevention of VAW and protection of victims, including a gender-sensitive reparations programme. [↑](#footnote-ref-170)
171. See <http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf>, visited on 31.01.2012, and Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, to the General Assembly: *Advancement of Women*, A/66/215, 1 August 2011, section C p. 21-22. Reparations should be oriented to eliminate the structural factors of discrimination, with the aim to subvert structural inequality which often is the root cause of VAW, see the report of SRVAW on Reparations: A/HRC/14/22, 23 April 2010, p. 11. [↑](#footnote-ref-171)
172. SR on Extrajudicial, Summary or Arbitrary Executions, A/HRC/14/24, 20 May 2010. In order to understand the dynamics of killings by non-State actors, which are often underreported and under-studied, the mandate’s reports to the Council and the GA have included global studies of particular phenomena such as killings by vigilantes and mob justice (A/64/187, paras. 15-83) and killings of “witches” (A/HRC/11/2, paras. 43-59). Former SR contributed substantially to reporting on the issue with respect to the issue of “honour killings” (E/CN.4/2000/3, paras. 78-84). [↑](#footnote-ref-172)
173. A/HRC/20/16, Report of the SRVAW on gender-related killings of women, May 2012. [↑](#footnote-ref-173)
174. HRC, General Comment No. 28: *Equality of rights between men and women* (article 3), 29/03/2000, CCPR/C/21/Rev.1/Add.10, General Comment No. 28, para. 2. [↑](#footnote-ref-174)
175. HRC, General Comment No. 20: Replaces general comment 7concerning prohibition of torture and cruel treatment or punishment (Art. 7), 10/03/1992, CCPR General Comment No. 20, para. 2. Especially with regard to torture, cruel, inhumane or degrading treatment, the violation was according to more traditional interpretation seen to be limited to offences committed by State agents only. [↑](#footnote-ref-175)
176. Special Rapporteur on Torture and other Cruel, Inhumane and Degrading Treatment or Punishment, A/HRC/7/3, 15 January 2008, p. 6. [↑](#footnote-ref-176)
177. Report of the Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading practices to the Human Rights Council, A/HRC/7/3

     15 January 2008, p. 8-21. International criminal jurisprudence has also recognized rape as torture (see ICTY *Celebici* and *Furundzija* judgements), and that rape can be a form of genocide/used for committing genocide (ICTR *Akayesu* judgement). Articles 7 and 8 of the Statute of the International Criminal Court on war crimes and crimes against humanity include lists of gender-specific crimes. [↑](#footnote-ref-177)
178. See Report of the Secretary General, In-depth Study on All Forms of Violence against Women, A/61/122/Add. 1, 6 July 2006, UN Women: Progress of the World’s Women, In Pursuit of Justice, 2011-2012, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, to the General Assembly: *Advancement of Women*, A/66/215, 1 August 2011, part III, and OHCHR, Report on good practices in efforts aimed at preventing violence against women, A/HRC/17/23, 19 April, 2011, part III. [↑](#footnote-ref-178)
179. See <http://www.coe.int/t/dghl/standardsetting/minjust/mju29/Opuz%20v%20Turkey.pdf>, and <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=opuz%20%7C%20turkey&sessionid=85802518&skin=hudoc-en>, visited on 01.02.2012. [↑](#footnote-ref-179)
180. See <http://www2.ohchr.org/english/law/protocoltraffic.htm>, visited on 17 September 2012. [↑](#footnote-ref-180)
181. See <http://www.ohchr.org/EN/Issues/Trafficking/Pages/Annual.aspx>, visited on 17 September 2012. [↑](#footnote-ref-181)
182. <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf> and its commentary: <http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf>, visited on 17 September 2012. [↑](#footnote-ref-182)
183. See e.g. Human Rights Committee General Comment No. 31, para 10 (Covenant rights have to be extended to non-citizens as well as citizens; ”to all persons within their terrotory and subject to their jurisdiction”), and CERD General Comment No. 30 para 7, on discrimination against non-citizens, stating that States should ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens, and CESCR General Comment No. 20, para 30, which states that the Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation. [↑](#footnote-ref-183)
184. See <http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx> and Global Migration Group: *International Migration and Human Rights, Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, introduction. [↑](#footnote-ref-184)
185. *Ibid*., p. 5. [↑](#footnote-ref-185)
186. *Ibid*., p. 45. [↑](#footnote-ref-186)
187. Global Migration Group: *International Migration and Human Rights, Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, p. 1. [↑](#footnote-ref-187)
188. See <http://www2.ohchr.org/english/law/cmw.htm>, and Global Migration Group: *International Migration and Human Rights, Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights*, p. 19. [↑](#footnote-ref-188)
189. Special Rapporteur on the human rights of migrants, A/HRC/20/24 [↑](#footnote-ref-189)
190. *Ibid*., p. 18. [↑](#footnote-ref-190)
191. See <http://www.un.org/ecosocdev/geninfo/populatin/icpd.htm#chapter10> and <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/470/17/PDF/N0947017.pdf?OpenElement>, visited on 13 September 2012. [↑](#footnote-ref-191)
192. BPFA para 58(k) [↑](#footnote-ref-192)
193. CEDAW Committee General Recommendation No. 26, CEDAW/C/2009/WP.1/R, 5 December 2008, paras 2, 4. [↑](#footnote-ref-193)
194. *Ibid*., para 5. [↑](#footnote-ref-194)
195. CEDAW Committee, General Recommendation No. 26 on women migrant workers, 5 December 2008, CEDAW/C/2009/WP.1/R, paras 10, 12, 13, 14, 15, 18, 19, 20, 21, 22 and recommendations in paras 23-29. [↑](#footnote-ref-195)
196. Special Rapporteur on the human rights of migrants, E/CN.4/2004/76, 12 January 2004, paras 25-35. [↑](#footnote-ref-196)
197. *Ibid*., paras 18, 19, 21, 23, 24, 25, 26 a)-d) and 27 a)-c). [↑](#footnote-ref-197)
198. A/HRC/15/20, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences on domestic servitude, 2010. [↑](#footnote-ref-198)
199. Noteworthy, on 16 June 2011, ILO Convention No. 189 on Domestic Workers was adopted, with the aim to address gaps in the protection of domestic workers. The new ILO standards stipulate that domestic workers around the world who care for families and households must have the same basic labour rights as other workers, including rights to reasonable hours of work, weekly rest of at least 24 consecutive hours, a limit on in-kind payment, clear information on terms and conditions of employment, as well as respect for fundamental principles and rights at work including freedom of association and the right to collective bargaining. The ILO General Conference also issued a Domestic Workers Recommendation in 2011, as further guidance to States for implementing the Domestic Workers Convention. As of this date, only three States have ratified the convention, which has thus yet to enter into force. [↑](#footnote-ref-199)
200. See *UNHCR Handbook for the Protection of Women and Girls*, January 2008, and *UNHCR Guidelines for Prevention and Response on Sexual and Gender-Based VIolence against Refugees, Returnees and Internally Displaced Persons*, <http://www.unhcr.org/pages/49c3646c1d9.html>, and UNHCR *Guidance Note on refugee claims related to Female Genital Mutilation*, <http://www.unhcr.org/refworld/pdfid/4a0c28492.pdf>, visited on 28 September 2012. [↑](#footnote-ref-200)
201. See <http://www.unhcr.org/pages/49da0e466.html>, visited on 12 September 2012; Article 3 of the Convention Against Torture also prohibits the refoulement of persons to countries where there is a risk of that person being subjected to torture. [↑](#footnote-ref-201)
202. See SRVAW report: *Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)*,E/CN.4/2001/73, 23 January 2001. [↑](#footnote-ref-202)
203. There is vast international jurisprudence and literature affirming the complementary application of international humanitarian law and international human rights law in times of armed conflict, international or internal, notwithstanding the possibility to derogate from certain CP rights, subject to strict requirements, in emergency situations. The application of both bodies of law in armed conflict has been addressed and confirmed e.g. through State practice and by human rights mechanisms, as well as by the International Court of Justice (ICJ) in its Advisory Opinions on the Legality of the Threat or use of Nuclear Weapons of 1996 and the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 2004. The CEDAW Convention entails provisions covering both women’s CP and ESC rights, and is applicable at all times: <http://www2.ohchr.org/english/bodies/cedaw/docs/GRConceptNote.pdf>, Concept Note for the general discussion held in July 2011 on women’s rights in conflict and post-conflict with the aim of commencing the Committee’s process of elaborating a "*General Recommendation on Women in Conflict and Post-conflict Situations*", visited on 08.02.2012. [↑](#footnote-ref-203)
204. MANJOO, Rashida and McRAITH, Calleigh: *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, Cornell International Law Journal, Volume 44, Number 11, 2011, p. 11-12, and SRVAW report: *Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)*,E/CN.4/2001/73, 23 January 2001. [↑](#footnote-ref-204)
205. SRVAW report: *Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000)*,E/CN.4/2001/73, 23 January 2001 and REHN, Elisabeth and SIRLEAF, Ellen Johnson: *Women, War, Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-Building (Progress of the World’s Women 2002, Vol. 1)*, published by UNIFEM and UNFPA. [↑](#footnote-ref-205)
206. MANJOO, Rashida and McRAITH, Calleigh: *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, Cornell International Law Journal, Volume 44, Number 11, 2011, p. 12. See also UN Security Council Resolution 1820 (and subsequent resolutions 1888 and 1960) recognizing sexual violence as a weapon of war. [↑](#footnote-ref-206)
207. REHN, Elisabeth and SIRLEAF, Ellen Johnson: *Women, War, Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-Building (Progress of the World’s Women 2002, Vol. 1)*, published by UNIFEM and UNFPA, p. 11. [↑](#footnote-ref-207)
208. Speech of the UN Deputy High Commissioner for Human Rights at Full-Day Discussion on Women’s Human Rights

     17th session of the Human Rights Council Panel on Conflict-related Violence against Women in Geneva, 10 June 2010. [↑](#footnote-ref-208)
209. Ibid., p. 10-11 and NI AOLAIN, Fionnuala: *Advancing Women’s Rights in Conflict and Post-Conflict Situations*, University of Minnesota Law School, Legal Studies Research Paper Series, Research Paper No. 11-11, p. 4. [↑](#footnote-ref-209)
210. REILLY, Niamh: *Women’s Human Rights*, Polity Press, 2010, Chapter 5, p. 98. [↑](#footnote-ref-210)
211. Speech of the UN Deputy High Commissioner for Human Rights at Full-Day Discussion on Women’s Human Rights

     17th session of the Human Rights Council Panel on Conflict-related Violence against Women in Geneva, 10 June 2010. [↑](#footnote-ref-211)
212. REILLY, Niamh: *Women’s Human Rights*, Polity Press, 2010, Chapter 5, p. 16-17. [↑](#footnote-ref-212)
213. VISEUR SELLERS, Patricia: *The Prosecution of Sexual Violence in Conflict, the Importance of Human Rights as Means of Interpretation*, <http://www2.ohchr.org/english/issues/women/docs/Paper_Prosecution_of_Sexual_Violence.pdf>, visited on 09.02.2012, p. 6-9. [↑](#footnote-ref-213)
214. Common Article 3 of the Geneva Conventions which applies in both international and non-international armed conflict as customary law includes violence against life and person, torture, taking of hostages, outrages against personal dignity, humiliating and degrading treatment, but does not explicitly mention rape and sexual violence. The list of ‘serious breaches’ of the Geneva Conventions also does not include specific mention of rape or SV. The Additional Protocols form 1977 the same minimum standards as Common Article 3 and include specific prohibitions of rape. See REILLY, Niamh: *Women’s Human Rights*, Polity Press, 2010, Chapter 5, p. 101. [↑](#footnote-ref-214)
215. Special Rapporteur on Violence against Women, Report on violence against women perpetrated and/or condoned by the State, E/CN.4/2001/73 23 January 2001, p. 7-13. Important cases with regard to prosecuting GBV include ICTY’s *Blaskic*, *Celebici, Furundzija, Foca, Kunarac* (first case in the history of international criminal prosecutions that is based solely on sexual violence against women), and ICTRs *Musema* and *Akayesu* cases. For conceptual clarity on conflict-related SV, see also: “Analytical and Conceptual Framing of Conflict-related Sexual violence, UN Action, June 2011, <http://www.stoprapenow.org/uploads/advocacyresources/1321456915.pdf>, visited on 30 August 2012. [↑](#footnote-ref-215)
216. Special Rapporteur on Violence against Women, *Report on violence against women perpetrated and/or condoned by the State*, E/CN.4/2001/73 23 January 2001, p. 9 and see <http://www.unictr.org/Portals/0/Case/English/Akayesu/judgement/actamond.pdf>, visited on 15.02.2012. [↑](#footnote-ref-216)
217. See <http://www.un.org/ictr/english/judgements/akayesu.html>, visited on 16.02.2012, and Special Rapporteur on Violence against Women, *Report on violence against women perpetrated and/or condoned by the State*, E/CN.4/2001/73 23 January 2001, p. 12. [↑](#footnote-ref-217)
218. The Rome Statute of the ICC – Article 7 (1)(g) lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as a crime against humanity; Article 8(2)(b)(xxii) lists rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization or any other form of sexual violence as serious violations of the laws and customs applicable in international armed conflict; and Article 8(e)(vi) lists rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization or any other form of sexual violence as a serious violation of article 3 common to the four Geneva Conventions armed conflict not of an international character. See VISEUR SELLERS, Patricia: *The Prosecution of Sexual Violence in Conflict, the Importance of Human Rights as Means of Interpretation*, <http://www2.ohchr.org/english/issues/women/docs/Paper_Prosecution_of_Sexual_Violence.pdf>, visited on 09.02.2012, for further analysis. [↑](#footnote-ref-218)
219. See *Information Sheet for OHCHR Field Presences on the Implementation of Security Council Resolutions concerning Women, Peace and Security*: Prevention: Prevention of conflict and all forms of violence against women and girls in conflict and post-conflict situations; Participation: Women participate equally with men and gender equality is promoted in peace and security decision making processes at national, local, regional and international levels; Protection: Women and girls’ rights are protected in conflict-affected situations; Relief and Recovery: Women and girls’ specific relief needs are met and women’s capacities to act as agents in relief and recovery are reinforced in conflict and post-conflict situations. [↑](#footnote-ref-219)
220. UNSCR 1325, 31 October, 2000, S/RES/1325 (2000). [↑](#footnote-ref-220)
221. See UNSCRs 1820, 1888, 1889 and 1960, and MANJOO, Rashida and McRAITH, Calleigh: *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, Cornell International Law Journal, Volume 44, Number 11, 2011, p. 23-25. See also the webpage of UN Action Against Sexual Violence in Conflict and the Special Representative of the SG for Sexual Violence in Conflict, Margot Wallström: <http://www.stoprapenow.org/page/specialrepresentativeonsexualviolenceinconflict/>, visited on 18.02.2012. [↑](#footnote-ref-221)
222. REILLY, Niamh: *Women’s Human Rights*, Polity Press, 2010, Chapter 5, p. 93-98 and Concept Note for the general discussion held in July 2011 on women’s rights in conflict and post-conflict with the aim of commencing the Committee’s process of elaborating a "*General Recommendation on Women in Conflict and Post-conflict Situations*", visited on 08.02.2012, p. 4. Gender-sensitive transitional justice mechanisms and reparations can play an important role in post-conflict transition, as can the inclusion of women at all stages of the peace process/-negotiations and all levels of political decision making post-conflict, taking into account their different roles and experiences. [↑](#footnote-ref-222)
223. UNSCRs 1325, 1820, 1888, 1889 and 1960 and SG reports on women, peace and security (2002, 2004-2009), on women’s role in peace building (2010) and on sexual violence in conflict and the implementation of the relevant resolutions (2011, 2012). Note that Security Council resolutions are legally binding for UN Member States, which makes 1325 and follow up resolutions powerful advocacy tools. [↑](#footnote-ref-223)
224. S/2012/732, Report of the Secretary General on women and peace and security, 2012 [↑](#footnote-ref-224)
225. REILLY, Niamh: *Women’s Human Rights*, Polity Press, 2010, Chapter 5, p. 113 and Concept Note for the general discussion held in July 2011 on women’s rights in conflict and post-conflict with the aim of commencing the Committee’s process of elaborating a "*General Recommendation on Women in Conflict and Post-conflict Situations*", visited on 08.02.2012, p. 15-17, explaining the relation between CEDAW provisions and UNSCR 1325 and follow up resolutions. See also CEDAW Committee’s General Recommendation No. 23 on women in public and political life. [↑](#footnote-ref-225)
226. UNSG report on conflict-related sexual violence, 13 January, 2012, A/66/657\*–S/2012/33\*, country-specific information outlines incidents of sexual violence during the year that in some cases have been widespread and systematic, as well as problems with rule of law, impunity and high levels of GBV that post-conflict countries continue to experience. See also MANJOO, Rashida and McRAITH, Calleigh: *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, Cornell International Law Journal, Volume 44, Number 11, 2011, p. 26-30 on remaining challenges. [↑](#footnote-ref-226)
227. UNSG report on women’s participation in peace building, 7 September 2010, A/65/354–S/2010/466, and other SG reports on women, peace and security (2002, 2004-2009). [↑](#footnote-ref-227)
228. SUTHANTHIRARAI, Kavitha and AYO, Cristina: *Promoting Women’s Participation in Post-Conflict Societies, How Women Worldwide are Making and Promoting Peace*, August 2010, by Global Action to Prevent War, NGO Coalition for Women, Peace and Security and Women’s International League for Peace and Freedom, p. 82-94 and MOSER, Annalisa: *Women Count, Security Council Resolution 1325 Civil Society Monitoring Report*, Project of the Global Network of Women Peacebuilders, October 2010. [↑](#footnote-ref-228)
229. See UNSCR 1960, S/RES/1960 (2010) <http://womenpeacesecurity.org/media/pdf-scr1960.pdf>. Resolution 1960 for the first time refers to “conflict-related sexual violence” instead of sexual violence in conflict, broadening the scope of its application. The concept of conflict-related sexual violence has been developed in the “[conceptual and analytical framing](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?reldoc=y&amp;docid=4e23eda22)” of conflicted related sexual violence. See: *Analytical and Conceptual Framing of Conflict-related Sexual violence*, UN Action, June 2011, <http://www.stoprapenow.org/uploads/advocacyresources/1321456915.pdf>, visited on 30 August 2012. [↑](#footnote-ref-229)
230. *Ibid*., and REILLY, Niamh: *Women’s Human Rights*, Polity Press, 2010, Chapter 5, p. 107-115. [↑](#footnote-ref-230)
231. See The Montréal Principles on Women’s Economic, Social and Cultural Rights and ESCR.net, COHRE and IWRAW Asia-Pacific: *A Primer on Women’s Economic, Social, and Cultural Rights*, <http://www.escr-net.org/usr_doc/Primer_WESCR_English_rev1.pdf>, visited on 21.02.2012. Today, women present 70 % of the 1.2 billion people living in poverty worldwide. [↑](#footnote-ref-231)
232. See *Women’s Rights to Land, Housing and Property in Post-conflict Situations and during Reconstruction: A Global Overview*, UNCHCS (Habitat), United Nations Centre for Human Settlements Land Management Series No. 9, Series of Publications in Support of the Global Campaign for Secure Tenure, No. 01/2000, p. 31. [↑](#footnote-ref-232)
233. See CESCR General Comment No. 7, (General Comments): The right to adequate housing (Art.11.1): forced evictions, 05/20/1997 and Study by the Special Rapporteur on *Women and housing: adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination*, Miloon Kothari, in accordance with Commission resolution 2002/49\*E/CN.4/2003/55.

     26 March 2003. [↑](#footnote-ref-233)
234. *Ibid*., p. 30. [↑](#footnote-ref-234)
235. *Ibid*., p. 30-47. [↑](#footnote-ref-235)
236. See the Committee on Economic, Social and Cultural Rights General Comments No. 15 on the right to water (E/C.12/2002/11, 20 January 2003), and No. 14 on the right to highest attainable standard of health (E/C.12/2000/4, 11 August 2000). [↑](#footnote-ref-236)
237. See the Committee on Economic, Social and Cultural Rights General Comment No. 18 on the right to work (E/C.12/GC/18, 6 February 2006). [↑](#footnote-ref-237)
238. See <http://www2.ohchr.org/english/law/cedaw.htm>, visited on 22.02.2012, and See Concept Note for the general discussion held in July 2011 on women’s rights in conflict and post-conflict with the aim of commencing the Committee’s process of elaborating a "*General Recommendation on Women in Conflict and Post-conflict Situations*", visited on 08.02.2012, p. 13. [↑](#footnote-ref-238)
239. Human Rights Committee, General Comment No. 31 on the nature of the general legal obligation imposed on State parties to the Covenant, para. 16, 29 March 2004, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>, visited on 2 September, 2012. [↑](#footnote-ref-239)
240. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/17/30, 29 April 2011p. 6-8 and UN Women: *Progress of the World’s Women, In Pursuit of Justice*, 2011-2012, p. 28-31. [↑](#footnote-ref-240)
241. *Ibid*., p. 32-37. [↑](#footnote-ref-241)
242. UN Women: *Progress of the World’s Women, In Pursuit of Justice*, 2011-2012, p. 8. [↑](#footnote-ref-242)
243. UN Women: *Progress of the World’s Women, In Pursuit of Justice*, 2011-2012, p. 52-55. [↑](#footnote-ref-243)
244. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/17/30, 29 April 2011, p. 5-6. [↑](#footnote-ref-244)
245. CCPR/C/21/Rev.1/Add.10, <http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument>, visited on 18 June 2012. [↑](#footnote-ref-245)
246. See ECHR case database, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=airey%20%7C%20v.%20%7C%20Ireland&sessionid=100072362&skin=hudoc-en>, visited o 20 June 2012. [↑](#footnote-ref-246)
247. CEDAW/C/GC/28, para 34. In addition, States parties should financially support independent associations and centres providing legal resources for women in their work to educate women about their rights to equality and assist them in pursuing remedies for discrimination. [↑](#footnote-ref-247)
248. See General Assembly resolution 60/147 of 16 December 2005, <http://www2.ohchr.org/english/law/remedy.htm>, visited on 18 June 2012. [↑](#footnote-ref-248)
249. See CEDAW Committee General Recommendation No. 19, the UN Declaration on the Elimination of Violence Against Women, the SRVAW reports. Please refer to the chapter V. d. above on violence against women. [↑](#footnote-ref-249)
250. The mechanisms should be available, effective and sensitive to the specific needs of women victims: Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/17/30, 29 April 2011, p. 8. See also HRC General Comment No. 31 para 16, and the Nairobi Declaration on Women’s and Girl’s Right to a Remedy and Reparation, <http://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf>, visited on 2 September 2012. [↑](#footnote-ref-250)
251. See Report of the Special Rapporteur on Violence against Women, Rashida Manjoo, A/HRC/14/22, 23 April 2010, on reparations for women who have been subjected to violence. [↑](#footnote-ref-251)
252. *Ibid*., paras. 24, 31, 34, 50-64, 83, 85. For the right to reparations, see: *Declaration on the Elimination of All Forms of VIolence Against Women*, and UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. On reparations for conflict-related sexual violence, see also the Inter-American Court of Human Rights in its land mark decision from 2009: *Cotton Fields vs. Mexico* and Report of the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of Congo to the High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Countries/ZR/DRC_Reparations_Report_en.pdf>, visited on 3 September 2012. [↑](#footnote-ref-252)
253. REPORT No. 80/11, CASE 12.626, MERITS, JESSICA LENAHAN (GONZALES) ET AL, UNITED STATES (\*), July 21, 2011. See <http://www.oas.org/en/iachr/decisions/merits.asp>, paras. 131-215, visited on 20 June 2012, cited by the Inter-American Commission on Human Rights (IACHR), *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II Doc. 63, 9 December 2011, p. 7-8 and 12. [↑](#footnote-ref-253)
254. UN Women: *Progress of the World’s Women, In Pursuit of Justice*, 2011-2012, p. 67-68. [↑](#footnote-ref-254)
255. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, mission to Mexico, 18 April 2011, A/HRC/17/30/Add.3, para. 77. [↑](#footnote-ref-255)
256. SRVAW, Mission to Somalia, December 2011, A/HRC/20/16/Add. 3, paras. 21, 22. [↑](#footnote-ref-256)
257. SRVAW, Mission to Ghana, July 2007, A/HRC/7/6/Add.3, paras. 5-11 and 63-66. [↑](#footnote-ref-257)
258. SRVAW, Mission to Afghanistan, July 2005, E/CN.4/2006/61/Add. 5, paras. 34, 38, 47-49, 52-54. [↑](#footnote-ref-258)
259. UN Women: *Progress of the World’s Women, In Pursuit of Justice*, 2011-2012, p. 68-78. [↑](#footnote-ref-259)
260. Inter-American Commission on Human Rights (IACHR), *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II Doc. 63, 9 December 2011, para. 269. [↑](#footnote-ref-260)
261. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/4/25

     18 January 2007, para. 36. The report mentions stoning for adultery, honour crimes, the forced marriage of children and amputations for theft as cases having been dealt with by informal mechanisms. [↑](#footnote-ref-261)
262. UN Women: *Progress of the World’s Women, In Pursuit of Justice*, 2011-2012, p. 56-58. [↑](#footnote-ref-262)
263. *Ibid*., p. 58-59. [↑](#footnote-ref-263)